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Daniel Patrick Moynihan

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The Housing Mess

An End to Rental Housing? — *Roger Starr*

The Post-Shelter Society — *George Sternlieb & James W. Hughes*

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What do you do when the Supreme Court is wrong?

DANIEL PATRICK MOYNIHAN

An institution charged with the role which the Supreme Court has successfully filled for so many years is entitled to our respect and understanding. If one criticizes the Court (as people have always done in the past, and should continue to do in the future), it should be essentially for the purpose of trying to contribute to that respect and to that understanding. The debt which we all owe to the Court is far greater than any individual can repay. Criticism of decisions of the Court or opinions of its members should be offered as an effort to repay that debt, and with the thought that conscientious criticism may be an aid to the Court in carrying out its difficult and essential task.

Erwin N. Griswold, 1963

In its Spring Term of 1979, the Supreme Court ruled in the case of *Gannett v. DePasquale* that the public does not have an independent constitutional right of access to a pretrial judicial proceeding. The case had been brought by the Gannett newspapers after one of their reporters was barred from a pretrial hearing in a murder case in upstate New York. Gannett argued that the guarantee of the Sixth Amendment to a "public trial" extended to the public at large, including, of course, the press. The Court held that this was not so. Mr. Justice Stewart's opinion for the majority of the Court declared: "The history upon which

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the petitioner and *amici* rely totally fails to demonstrate that the Framers of the Sixth Amendment intended to create a constitutional right in strangers to attend a pretrial proceeding. . . ."

Strangers? The press?

In a concurring opinion, Mr. Justice Rehnquist went further, and in such a manner as to highlight the fact that though, strictly speaking, *Gannett v. DePasquale* concerned pretrial proceedings, the decision is easily construed as applying to trials as well. The Court's recitation, he said,

> of the need to preserve the defendant's right to a fair trial . . . should not be interpreted to mean that under the Sixth Amendment a trial court can close a pretrial hearing or trial only when there is a danger that prejudicial publicity will harm the defendant. To the contrary, since the Court holds that the public does not have *any* Sixth Amendment right of access to such proceedings, it necessarily follows that if the parties agree on a closed proceeding, the trial court is not required by the Sixth Amendment to advance any reason whatsoever for declining to open a pretrial hearing or trial to the public.

The decision was the lead story of *The New York Times* the following day. It had, *The Times* reported, "aroused immediate strong criticism from both the press and the legal profession." The initiative of the Gannett newspapers in challenging the closing of a local court proceeding had been seen as a commendable effort to defend the rights both of the public and the press. The Edward Willis Scripps First Amendment Award for 1979 was presented to the Gannett Rochester Newspapers for pressing the suit and for their reporting and analysis of the issues involved. Allen Neuharth, Chairman of the Board of the Gannett newspapers and Chairman of the American Newspaper Publishers Association, called the ruling "another chilling demonstration that the majority of the Burger Court is determined to unmake the Constitution." The American Civil Liberties Union declared that the decision "erected an iron curtain between the criminal process and the inquiring press."

Editorial comment was not less severe. Much emphasis was placed on the asserted departure by the Court from historical, even ancient standards of justice. A forceful *Times* editorial began:

> For centuries the idea of open justice has been synonymous with justice itself. Before the Norman Conquest, before English judges spelled out the rudimentary rights of defendants, throughout the development of British and American jurisprudence, the tradition of open courts has been honored. Now a 5-4 Supreme Court majority has ordained an exception. . . .

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In a commentary, Tom Wicker, Associate Editor of *The Times*, deplored the ruling. It would surely lead to miscarriage of justice, he wrote. Not just the press, but the general public could be barred from courts, discarding a standard "rooted in American history." For the Court "now to say that that tradition has no constitutional validity . . . shakes public confidence in institutions and rights long thought to be a citizen's birthright."

The most telling comment came from the Court itself. In a dissenting opinion, Mr. Justice Blackmun stated that in their constitutional argument the Gannett newspapers were right, and the majority of the Court was wrong:

> The Sixth Amendment, in establishing the public's right of access to a criminal trial and a pretrial proceeding, also fixes the rights of the press in this regard. Petitioner, as a newspaper publisher, enjoys the same right of access . . . as does the general public. And what petitioner sees and hears in the courtroom it may, like any other citizen, publish or report consistent with the First Amendment.

In "rare circumstances," Justice Blackmun allowed, exclusion could be justified. But, he concluded, "Those circumstances did not exist in this case."

II

It is difficult to avoid the judgment that Justice Blackmun was right and the majority of the Supreme Court was wrong. If so, the question arises: What to do?

This is a question for which we have no clear answer and little theory. The Court is not supposed to be wrong. Even *The Federalist*, much given to emphasizing the frailty of human judgment, does not adequately treat this possibility. To be sure, the doctrine of judicial supremacy—of the Supreme Court's power to void acts of Congress by declaring them unconstitutional—is not explicit in the Constitution and was not generally assumed to be implicit until Chief Justice John Marshall established it in *Marbury v. Madison*. But Hamilton, who believed in it, and in *Federalist* paper Number 78 made a strong argument for it, had to deal with the charge that "the errors and usurpations of the Supreme Court of the United States will be uncontrollable and remediless." In Number 81, he suggests several reasons why this charge, upon examination, is "made up altogether of false reasoning upon misconceived fact," but all but one of his points are actually further arguments for the necessity and rationality of judicial supremacy. The sole check upon

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supremacy suggested by Hamilton, other than that of appeals to superior courts, is the power of Congress to impeach individual judges:

> This is alone a complete security. There never can be a danger that the judges, by a series of deliberate usurpations of the authority of the legislature, would hazard the united resentment of the body intrusted with it, while this body was possessed of the means of punishing their presumption, by degrading them from their stations.

No other corrective is suggested. Rather, the argument is made with particular force that the judiciary is inherently and uniquely possessed of the necessary wisdom and disinterest to weigh the actions of the legislature and the executive on constitutional scales. But if the Court were wrong, what—short of impeaching its members—would be the remedy? *The Federalist* does not say.

It happens, however, that we have a considerable practical experience of just this situation. For long periods of American history the Supreme Court has been wrong about one or another of the principal constitutional issues of the day. It has been wrong in the specific sense that there later came a time when the Court reversed itself, and either directly or implicitly stated that it *had* been wrong.[1] Nor has this been without consequence. Charles Evans Hughes, in his 1928 volume, *The Supreme Court of the United States,* could refer to the Court's having suffered from a succession of "self-inflicted wounds."

Thus from the last decade of the nineteenth century into the fourth decade of the twentieth century the Supreme Court repeatedly declared that the due process clauses forbade labor legislation. Under the Fourteenth Amendment, it was held, for example, that the state of New York could not require that bakers work no more than 10 hours a day (*Lochner v. New York,* 1905). Under the Fifth Amendment, a District of Columbia Minimum Wage Act was held invalid (*Adkins v. Children's Hospital,* 1923).[2]

This was solemn nonsense, as Holmes pointed out in his acid

[1] Strictly speaking, the Court could have been right the first time and wrong the second. Walter Berns contends, properly, that the standard against which we measure a decision in order to say whether the Court was wrong must be the Constitution itself, not what the Court says about it. Still, experience is the life of constitutional law also, and I would hold that where the Court has reversed itself it has almost always done so to correct an observable error.

[2] In *Erie R.R. Co. v. Tompkins* (1937) the Court reversed *Swift v. Tyson,* acknowledging that they were abandoning a doctrine widely applied ". . . throughout nearly a century. But the unconstitutionality of the course pursued has now been made clear and compels us to do so."

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comment in *Lochner* that "the 14th Amendment does not enact Mr. Herbert Spencer's *Social Statics*."[3] But the solemn nonsense persisted, thwarting for almost half a century the major social movement of the time. Then, as suddenly as it had begun, it stopped. Writing somewhat later, Mr. Justice Douglas declared in *Williamson v. Lee Optical Co.* (1955):

> The day is gone when this Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought.

Or, as Mr. Justice Black put it in 1963 in *Ferguson v. Skrupa:*

> The doctrine that prevailed in *Lochner, Coppage, Adkins, Burns,* and like cases—that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded.

Of these episodes in American history, the most notorious was the *Dred Scott* decision of 1857 which held the Missouri Compromise to be unconstitutional, a matter in which the Court was, again, plainly wrong. The most pernicious was *Plessy v. Ferguson* (1896), which held that the Fourteenth Amendment permitted separate but equal public facilities segregated by race, a doctrine that persisted until *Brown v. Board of Education* (1954).

Apart from the *Dred Scott* decision which was, in effect, overturned by the Thirteenth Amendment, the essential fact in all these cases is, however, that the time came when the Court discovered its error and reversed itself.[4] This may appear much too optimistic,

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[3] Holmes' suggestion appears to be misleading. The Court was not trying to enact anyone's social theories but its own. In James Q. Wilson's phrase, the Court had an idea as to what a "good economy" would be, and it was against this standard that statutes were measured. A considerable body of labor legislation and business regulation was in fact upheld by the "Laissez-Faire Court." My point is simply that there was precious little constitutional warrant for any of this.

[4] To be sure, the Sixteenth Amendment, permitting a progressive federal income tax, had the effect of reversing the Supreme Court's five-to-four decision in *Pollock v. Farmers' Loan and Trust Company* (1895), which had struck down such a tax. But many commentators feel that in this instance the Court was accurately interpreting Article I, Section 9 of the Constitution, and that changing circumstances in fact called for a constitutional amendment. The contrary view, expressed by some members of Congress during debate on the Sixteenth Amendment, is that the Court *was* wrong but had recognized this and was already diluting the effect of the *Pollock* decision and that the proposed amendment was therefore superfluous.

The Eleventh Amendment, ratified in 1795, which denied the Supreme Court original jurisdiction in law suits brought by citizens against individual states, responded to the Court's decision in *Chisholm v. Georgia* (1793) that it had such jurisdiction. But this could reasonably be described as part of the completing of the Federal structure embodied in the Constitution itself.

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even pietistic a reading of American history, but there it is for those to refute who will. The question I would address is how these reversals have come about. It is a process not now described in political or juridical science. As a beginning contribution I would offer a simple hierarchy of response which in one or another combination has commonly led the Court to change its position in those instances in which it has been wrong. In ascending order: Debate, Litigate, Legislate.

(In theory the ultimate recourse of those who feel the Constitution has been misread is an amendment settling the issue. But this has *never* happened. It has never proved necessary. Apart from the evolving idea of Federalism that needed to correct *Chisholm,* the exceptional circumstances that followed *Dred Scott,* and the changed circumstances that caused a graduated income tax to appear more reasonable in 1913 than in 1787, sooner or later the Justices have rectified their mistakes. That is not the least ground for the loving fealty we owe the Court.)

As a "case history" I will first present in some detail the history of the issue of state aid to nonpublic schools. I will argue that the Supreme Court was wrong in its interpretation of the Establishment Clause in its decision *Everson v. Board of Education* (1947), but that after a generation the conditions are developing in which it may (will?) now reverse itself. That time is a considerable element in this process will be of small consolation to those now most distressed by the decision in *Gannett v. DePasquale,* but this also appears to be the general experience.

III

Some weeks before the lengthy *Gannett* decision was announced to the consternation of so many, the Supreme Court in 26 words announced its decision in *Byrne, Brendan T. et al. v. Public Funds for Public Schools*: "The judgment is affirmed. The Chief Justice, Mr. Justice White, and Mr. Justice Rehnquist would note probable jurisdiction and set the cases for oral argument." Thus yet another effort by a state government, in this case New Jersey, to provide a measure of assistance for nonpublic, mostly denominational schools was found to violate the Establishment Clause of the First Amendment, and hence to be unconstitutional.

This in itself was nothing noteworthy. Since 1947, when the Court in *Everson* ruled on a state school-aid statute (also of New Jersey) there have been altogether some 46 cases brought to the Court

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dealing with aspects of this subject. As the Circuit Court in the most recent New Jersey case stated in the opening sentence of the majority opinion, each of these presented "recurring and troublesome questions concerning the relationship between religion and government."

Withal, the 1979 action by the Supreme Court received some attention, for it involved tuition tax credits. New Jersey had enacted a state income tax to provide funds for public education. Included in the statute was a deduction for parents of children in nonpublic schools, it being reasoned that through tuition they contribute to the secular objective of education, and could receive some partial recompense. (For a parent earning $20,000, the total savings was to be $20.)

A more general, and national, measure, providing tuition tax credits at all levels of education—which is to say including college and university as well—had passed the House of Representatives in 1978. The post-secondary portion passed the Senate as well, while the elementary and secondary provisions failed by only 15 votes. This indicated considerable national support for such assistance, but in the New Jersey case the Circuit Court declared itself bound by a 1973 Supreme Court decision, *Committee for Public Education v. Nyquist,* which struck down a New York measure allowing a taxpayer with a dependent in a nonpublic elementary or secondary school to deduct an amount from his gross income, and thus pay less state income tax. The Supreme Court had held that this had the primary effect of advancing religion and that therefore—following the constitutional "tests" established in prior decisions from *Everson* through *Lemon v. Kurtzman* (1971)—the state law and the deduction it established necessarily failed.

But the notable aspect of the New Jersey event went altogether unremarked. In a separate opinion of the Circuit Court, Judge Joseph F. Weis declared that while clearly the Supreme Court decision in *Nyquist* governed the case, just as clearly the *Nyquist* decision was wrong. It had been a split decision (as almost all these decisions have been) and in Judge Weis's view "the dissenters have far the better of it in the *Nyquist* opinion. . . ."

Those dissenters—Chief Justice Burger and Justices White and Rehnquist—had written a trio of powerful opinions, observing *inter alia* that:

> While there is no straight line running through our decisions interpreting the Establishment and Free Exercise Clauses of the First Amendment, our cases do, it seems to me [the Chief Justice], lay down

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> one solid, basic principle: that the Establishment Clause does not forbid governments, state or federal, to enact a program of general welfare under which benefits are distributed to private individuals, even though many of those individuals may elect to use those benefits in ways that "aid" religious instruction or worship. . . . The essence of all these decisions . . . is that government aid to individuals generally stands on an entirely different footing from direct aid to religious institutions. . . . However sincere our collective protestations of the debt owed by the public generally to the parochial school systems, the wholesome diversity they engender will not survive on expressions of good will.

Rather, as with the dog that Sherlock Holmes observed did *not* bark, the significant fact in the New Jersey tuition-deduction case is that the high court chose *not* to hear an appellate judge tell it that it was wrong.

Here close attention is required. There are two senses in which it may be argued that the Supreme Court has been wrong in this area. The first concerns the basic *Everson* decision itself, set forth by Justice Hugo Black, which announced a rule of law in the widest sense:

> The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.

The key elements of the rule, as Michael J. Malbin has written, are that Congress cannot give nondiscriminatory aid to religion and that neither can the states.

This is the basic ruling of the Court and it endures three decades later. It has not been challenged, albeit (in my view) wrong. Instead, the *Everson* doctrine has been the basis for numerous challenges to state efforts to channel modest amounts of aid into nonpublic education through one means or another, efforts which persist. (The actual holding in *Everson* itself was that New Jersey *could* provide bus transportation to parochial-school students.) The challenges have always been brought by persons opposed even to such small efforts and determined to maintain the *Everson* doctrine in as strict a form as possible.

This opposition has been organized (the list of plaintiffs in the recent New Jersey case begins: Public Funds for Public Schools of New Jersey, American Civil Liberties Union of New Jersey, Inc., Americans for Democratic Action . . .) and vigilant. As states have devised new forms of aid to accommodate each succeeding Court decision, the organizations have typically challenged the statute,

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leading in time to yet another decision by the Court. Thus there has followed from *Everson* a great number of interpretive, or exegetic rulings which not infrequently have been wrong, if you will, in their own right.

The result has been an intellectual shambles: one confused and convoluted decision requiring a yet more confused and convoluted explanation or modification. Professor Antonin Scalia of the University of Chicago Law School, former Assistant U.S. Attorney General, Office of Legal Counsel, and in that capacity the senior constitutional authority in the Executive Branch, testified before the Senate Finance Committee in 1978: "It is impossible, within the time allotted, to describe with any completeness the utter confusion of Supreme Court pronouncements in the church-state area." Professor Philip Kurland, also of the University of Chicago Law School, writes that "the Court is thoroughly unprincipled in the area," meaning, of course, that there is no coherent principle to be found in the ever-lengthening series of decisions.

Such incoherence has invited challenge from persons with no greater interest than intellectual rigor in the high court. Challenges to this secondary, exegetic body of decisions from Supreme Court Justices themselves have become increasingly frequent, even as challenges to the primary decisions have remained rare. The notable quality of the Weis opinion is that it challenges both.

Judge Weis's opinion treats first the exegetic decisions:

> An analysis of the cases touching upon state assistance to nonpublic schools could proceed at length, but would merely illustrate the lack of a principled and logical thread. The reality is that the Supreme Court has marked out a series of boundaries and points of departure on an ad hoc basis. Thus, school books may be loaned to pupils, *Board of Education v. Allen* . . . (1968), but weather charts may not, *Wolman v. Walter* . . . (1977). Buses may be provided to allow for transportation of pupils to school, *Everson v. Board of Education* . . . (1947), but not for field trips to courthouses or museums, *Wolman v. Walter, supra.* Financial aid for the construction of buildings may be given to colleges, *Tilton v. Richardson* . . . (1971), but grants to provide needed maintenance to parochial schools in slum neighborhoods are forbidden, *Committee for Public Education v. Nyquist, supra.*

The Weis opinion turns then to what is the fundamental constitutional issue:

> In many of the opinions in this area, I am struck by the frequent use of the metaphor that the first amendment was intended to erect a "wall" between church and state. E.g. *Committee for Public Education v. Nyquist, Everson v. Board of Education.* Insofar as this concept

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expresses a guiding principle for constitutional adjudication, I find it unfortunate and historically inaccurate.

My first reservation is semantical. So often a wall implies fear and hostility, as the infamous structure separating East and West Berlin so dramatically demonstrates. No such emotions should dominate the relationship between government and religion and the use of a metaphor that encourages such concepts is not desirable.

A more fundamental objection, however, is grounded in the history of the Establishment Clause. Although an accurate description of the Framers' intent is beyond our grasp, it is dubious that the Madisonian-Jeffersonian concept of absolute separation was widely accepted by the draftsmen. . . .

Commenting upon the checkered constitutional history of the Establishment Clause, one scholar has noted: "[I]t remains at best ironic and at worst perverse to appeal to the history of the Establishment Clause to strike at practices only remotely resembling establishment in any core sense of the concept." (L. Tribe, *American Constitutional Law.*)

Yet that is what has been done in using the "wall" concept to justify a policy of judicial hostility towards state aid to nonpublic schools.

Perhaps a more accurate appraisal of the purpose of the first amendment is that the state is to be neutral in its relationship with religion. And so if a particular legislative enactment, particularly in the field of taxation, provides clearly observable secular benefits, then religious institutions should not be barred solely because of their status. See *Walz v. Tax Commission.*

Finally, constitutional adjudication requires that the courts read a particular clause with its historical context in mind, lest the fears and prejudices of an earlier age serve to distort the problems of today. As Justice Powell, who wrote the *Nyquist* opinion, noted some four years later:

> It is important to keep these issues in perspective. At this point in the 20th century we are quite far removed from the dangers that prompted the Framers to include the Establishment Clause in the Bill of Rights. See *Walz v. Tax Comm'n.* The risk of significant religious or denominational control over our democratic processes—or even of deep political division along religious lines—is remote, and when viewed against the positive contributions of sectarian schools, any such risk seems entirely tolerable in light of the continuing oversight of this Court. Our decisions have sought to establish principles that preserve the cherished safeguard of the Establishment Clause without resort to blind absolutism. *Wolman v. Walter.*

These cases require a realistic approach, not an exaggerated response to nonexistent threats. Simple justice would require that the court honor the decision of the New Jersey legislature where the *quid pro quo* weighs heavily in favor of the state. But as the majority correctly concludes, the narrow legal issue in this case is whether *Nyquist* or *Walz* governs. Although it seems to me that the dissenters have far the better of it in the *Nyquist* opinions, I cannot in all intellectual

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> honesty say that case differs from the one *sub judice*. I am bound to follow the holding of the majority of the Supreme Court and I therefore concur, albeit reluctantly. . . .

". . . [J]udicial hostility towards state aid to nonpublic schools." It has now been stated from the federal bench.

Whence does this hostility derive? (Assuming, of course, that it exists, and this brief is clearly written from the partisan view that it does.) It does *not* derive from the Establishment Clause of the First Amendment. The Supreme Court is wrong. This is the heart of it. The matter must begin here.

The Establishment Clause is simplicity itself. It states that Congress may not set up a national church.

There are two ways to get at this meaning. The first is to acquire a moderate facility with the English language, and in particular with one word that has somewhat gone out of usage. The clause states: "Congress shall make no law respecting an establishment of religion. . . ." The term "establishment" referred to a state church, such as the Church of England, an altogether familiar concept at the time, and rather a familiar institution.

All 13 colonies had established churches or other official involvement with particular denominations at some point in their history. At the outbreak of the Revolution, the Church of England was officially established in five southern colonies (Virginia, Georgia, South Carolina, North Carolina, and Maryland); the Congregationalist Church enjoyed official status in Massachusetts, Connecticut, and New Hampshire; and the Anglican and Dutch Reformed Churches both had similar status in New York. This pattern remained in flux for some time. (Virginia, for example, took steps toward disestablishment in 1776 and 1786 but did not eliminate the vestiges of the previous arrangement until 1802). When the First Amendment was ratified, three states gave preference to particular denominations, Anglican, Congregationalist, and Dutch Reformed; four states gave special status to the Protestant religion; three required adherence to Christianity among public officeholders; and three granted full religious freedom.

The term "establishment" has become somewhat unfamiliar in the intervening two centuries simply because there are no longer any established churches around. (In much the same fashion the provisions of Article III that "no Attainder of Treason shall work Corruption of Blood" would puzzle many persons simply because we don't do that much anymore.) But the meaning of the term "establishment" as used in the First Amendment is altogether accessible

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and quite unchanged. The first definition given in Webster's Second Edition is: "The establishing by law of a church or religion, etc." It is not too much to ask that persons who profess to care about the Constitution take the trouble to learn the language in which it is written.

Neither, if Mr. Justice Powell is to be believed, is it too much to ask that such persons learn a little of American history. To be fair, this may be stated with perhaps more insistence today than three decades ago when the *Everson* doctrine came into being. For the longest while, the meaning of the First Amendment was clear to everyone concerned. Then a curious sequence took place. In the second half of the 19th century a movement arose to prohibit aid to Catholic schools. It was assumed that the Constitution would have to be amended to do this. But the "Blaine amendment," first proposed in 1876, was never adopted by Congress. (For what it may be worth, a clause in the amendment provided that "This article shall not be construed to prohibit the reading of the Bible in any school or institution. . . .") But somehow when the Court came to rule in 1947, it took the political attitudes of the late 19th century to be the constitutional purposes of the late 18th. In the Court's defense it may be said that in 1947, there wasn't much formal history to direct it otherwise.

This has now changed. In a predictable manner scholars have been drawn to the issue. In what may also have been predictable, it took them a good while to get the facts organized. In *Beyond the Melting Pot* (1963), Nathan Glazer and I may have helped reconstruct the early history of state aid to education. (In New York it went exclusively to church-related schools, as there were none other.) In *The Garden and the Wilderness* (1965), Mark DeWolfe Howe commenced a careful examination of the meaning of the First Amendment and the intentions of those who drafted and ratified it. Of the line of church-state decisions begun with *Everson,* he wrote:

> The Supreme Court, in my judgment, has gravely erred in its reading of two chapters of American history. An impulsive eagerness to find that the state and nation were subject to the same disabilities so far as religion was concerned, led the justices to make the historically quite misleading assumption that the same considerations which moved Jefferson and Madison to favor separation of church and state in Virginia led the nation to demand the religious clauses of the First Amendment. . . . Furthermore, it permitted the Court to fill the space from which it had removed the vivid complexities of the eighteenth century's political philosophy with a simple and false absolute—all aid to religion is unconstitutional.

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Howe's analysis was followed, and powerfully reinforced, by Walter Berns in his splendid volume, *The First Amendment and the Future of American Democracy* (1976) and by Michael J. Malbin's extensive essay, *Religion and Politics: The Intentions of the Authors of the First Amendment* (1978). Although Berns and Malbin use different evidence, they reach similar conclusions, as summarized by Malbin:

> As the Court has espoused its doctrines, it has relied on an incredibly flawed reading of the intentions of the authors of the First Amendment. . . . Aid to religion was to be permitted as long as it furthered a purpose the federal government legitimately could pursue and as long as it did not discriminate in favor of some sects or against others.

The research continues, and we are gradually acquiring a solid understanding of the relationship between church and state that obtained in 1791, of the assumptions and intentions of the Founding Fathers, and of the practices that prevailed through much of the nineteenth century. Among the major works now in progress is a comprehensive history of the First Amendment by Professor Robert L. Cord of Northeastern University.

IV

In his dissent in the *Gannett* case, Justice Blackmun stated that the Sixth Amendment established "the public's right of access to a criminal trial and a pretrial proceeding" and that of the press also. Those who would persuade the majority of the Court of this view must begin by reconstructing the history of that Amendment and of the First Amendment. This is not as direct a matter as might be thought, but it is entirely doable. It has now been done with respect to the Establishment Clause.

The Bill of Rights was adopted in something of a hurry: Debate on the Establishment Clause took up about one day in each chamber. The standard, if somewhat shaky record for the House of Representatives is the *Annals of Congress,* first published in 1834, taken from contemporary newspaper accounts and from the shorthand notes of a reporter, Thomas Lloyd. It is not complete, but is the only serviceable record of the proceedings of the First Congress. An essential fact is that the texts of successive versions of the clause, in each body, are available and these make the intention of the Congress conclusively clear. James Madison introduced two amendments in the House on June 7, 1789. The first of the amendments read:

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> The Civil Rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, nor on any pretext infringed.

And the second:

> No state shall violate the equal rights of conscience or the freedom of the press, or the trial by jury in criminal cases.

Malbin notes that Madison's language prohibited both states and the federal government from infringing on the rights of conscience. "In contrast, the Establishment Clause was to apply only to the federal government."

How so? Because, as noted earlier, various of the states still *had* established churches. This is the lesson Perry Miller has taught: that if there was no very great love of religious tolerance in eighteenth-century America, given the profusion of religious denominations there was a very great need of it.

Alas, it was this very fragility of the Union which led ultimately to the substitution of the present language for Madison's explicit prohibition against "any national religion." Malbin reminds us that "federalism was *the* overriding issue throughout the Congress." It was still a lively issue as to whether the Constitution had created a new nation, or merely a federation of states. The Federalists, insisting that the latter was the case, carefully left the word "nation" out of the Constitution. But they were suspected (correctly!) of having a nation in mind and of being determined to forge one. Accordingly, in the debate in the First Congress the Anti-Federalists seized on the word "national" in Madison's draft, declaring that the gigantic conspiracy, the massive subterfuge was at last revealed. Feelings were intense. Elbridge Gerry recalled that at the Philadelphia convention of 1787 the two factions were designated Federalists and Anti-Federalists. They should, he said, have been called "rats" and "anti-rats," i.e., ratification and anti-ratification. The phrase "national religion" promptly disappeared. Otherwise the theme of the debate, which took place August 15, was set rather by the opening address of Peter Sylvester of New York who apprehended that the clause "might be thought to have a tendency to abolish religion altogether."

Senate debate was secret at this time. (The doors of the Senate chamber remained closed until 1795, and no record of the debates is available until 1802 when journalists were admitted to the Senate floor. The official transcript embodied in *The Congressional Record* did not begin until 1873.) But the Senate Journal records the texts

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which were considered on September 3. The first substitute offered for the House language began: "Congress shall make no law establishing one religious sect or society in preference to others. . . ." The final language sent back to the House read: "Congress shall make no law establishing articles of faith or a mode of worship or prohibiting the free exercise of religion." A conference committee settled on the present language.[5]

A century and a half later, when the Supreme Court in *Everson* turned its attention to this subject the Justices did not accept the Establishment Clause at face value, as meaning what it said, nor yet did they inquire into this history. Rather, as much as we can judge, they inquired as to the views of Madison and Jefferson, and came up with the well known "wall of separation." This surely will not do. The question is not what Madison or Jefferson may have thought; the question is what the Congress did. It is perhaps not wholly irrelevant that Jefferson was not a member of the First Congress; he was Secretary of State at the time, and quite uninvolved. (He had spent most of the previous five years on diplomatic missions in Western Europe.) Madison was floor manager of a complex piece of legislation which required compromise. Compromise he did. What more evidence is needed than that his original draft in no way reflected his own, and for the time somewhat extreme views?

If it be the case, in Judge Weis's words, that "an accurate description of the Framers' intent is beyond our grasp," are we not then well advised simply to take the plain language for what it plainly says? No establishment of religion, period.

Does not the burden of proof rest with those who assert that it says more? The legislators of the early American Republic were entirely friendly to religion and religious purposes. The House passed the 10 amendments of the Bill of Rights on September 24, 1789. The *next* day the House passed a Joint Resolution calling upon President Washington to issue a Thanksgiving proclamation. The Senate passed the Bill of Rights on September 26, and on the 27th passed the Joint Resolution. It called for "a day of public Thanksgiving and prayer, to be observed, by acknowledging, with grateful hearts, the many and signal favors of Almighty God, especially by affording them an opportunity peaceably to establish a constitution of government. . . ." The first Congress wanted to encourage religion,

[5] Not at issue here is the "incorporation" doctrine, whereby the prohibitions imposed on Congress by the Bill of Rights have been expanded by the Supreme Court to cover the actions of States. The Supreme Court interprets the 14th Amendment to bind the States as well as Congress when they legislate "respecting an establishment of religion."

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but in no circumstances to establish a church so as to prefer one to the other. Chaplains were appointed to the armed forces. Both House and Senate began—and still begin—each day with a prayer by a clergyman. The Northwest Ordinance of 1787, re-enacted by Congress in 1789, set aside federal lands in the territory for schools: "Religion, morality, and knowledge," the law read, "being necessary to good government and the happiness of mankind, schools and the means of learning shall forever be encouraged." If they were to aid education, how could they do otherwise? Who, in 1789 in the United States, could imagine a school that did not teach some religious belief or other?

Madison and Jefferson, say the Justices, and there the matter rests. The inferior courts follow, as they must. Early on, the majority opinion in the recent New Jersey case invokes the declaration of former Chief Justice Warren that the First Amendment "underwrote the admonition of Thomas Jefferson that there should be a wall of separation between church and state." This well-known phrase of Jefferson's first occurs in a letter to the Danbury Baptists in 1802.[6] How could it be said to underwrite an amendment to the Constitution which had been written 11 years earlier? But this has not infrequently been the level of argument used against aid to nonpublic schools.

The constitutional facts are obvious enough. The state, at any level, is allowed to cooperate with religious groups in a nondiscriminatory manner in the furtherance of acceptably secular purposes. Further, this is precisely what now happens, with the single exception of elementary and secondary schools. Thus city, state, and federal funds, in the usual baffling mix, provide most of the support for the Jewish Hospital in Brooklyn. Federal foreign-aid funds provide much of the resources for the relief work in developing nations of Church World Services, a Protestant agency. The federal government provides money to improve the curriculum and the teaching methods of Marist College, a Catholic institution in Poughkeepsie. And so it goes.

The exception, to repeat, is that of elementary and secondary schools with religious affiliations. (*Not* colleges and universities with such affiliations.) Slowly, however, this anomaly is emerging. Slowly, the hierarchy of responses that arise when the Court is wrong is beginning to appear.

[6] Although others—starting with Roger Williams in the seventeenth century—had employed this and similar constructions, a fairly systematic search of the literature indicates—and biographers of Jefferson concur—no prior appearance of this phrase in Jefferson's own writings and utterances.

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V

1. *Debate.* This is the first and in every way crucial response. When the Court is wrong there must be those who will say so. Often as not this will be a dissenting member of the Court itself. But to be effective the question must become a political issue of the day. In his grand study, *The Least Dangerous Branch,* Alexander M. Bickel described Lincoln's response to *Dred Scott*:

> The principle that the Court proclaimed was that slavery was not only legal in states which had it but was constitutionally guaranteed in unorganized territories as well. In the debates with Stephen A. Douglas in 1858, Lincoln said that he was against this decision, that he thought it wrong, that he feared its consequences, that he deemed it altogether deplorable. Douglas, on the other hand, without admitting that he necessarily thought the decision right, dwelt heavily on the argument that "whoever resists the final decision of the highest judicial tribunal aims a deadly blow at our whole republican system of government." "I yield obedience," Douglas said, "to the decisions of that Court—to the final determination of the highest judicial tribunal known to our Constitution." To this Lincoln countered by deriding the notion that a decision of the Supreme Court is a "Thus saith the Lord." The Court, he said, can be wrong. There is nothing sacred about the Court's decisions. Men may properly differ with them.

As the initial decisions regarding state and church involved Catholic schools, the first arguments in opposition to *Everson* and its progeny came, generally, from Catholics. This made for difficulties (as the press, perhaps, will now find), it being easy for others to dismiss or ignore arguments that are necessarily self-interested. It may be Catholics were deficient in the skills and the access needed to mount a debate of this sort; it may also be that an element of prejudice worked against them. Surely there are episodes in this generation-long history that raise this latter question. Consider the instances in which Mr. Justice Douglas supported his opinions in *Tilton v. Richardson* (1971) and *Lemon v. Kurtzman* (1971) with references to a book, *Roman Catholicism* by Loraine Boettner, published in Philadelphia in 1962. This volume has been characterized by Douglas Laycock of the University of Chicago Law School as an "elaborate hate tract." Mr. Boettner's views on Catholicism generally may be summarized in the following brief quote:

> Our American Freedoms are being threatened today by two totalitarian systems, communism and Roman Catholicism. And of the two in our country Romanism is growing faster than is communism and is the more dangerous since it covers its real nature with a cloak of religion.

That particular passage is not cited by Mr. Justice Douglas, but

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here is one he quotes in footnote 20 of his concurring opinion in *Lemon v. Kurtzman:*

> In the parochial schools Roman Catholic indoctrination is included in every subject. History, literature, geography, civics, and science are given a Roman Catholic slant. The whole education of the child is filled with propaganda. That, of course, is the very purpose of such schools, the very reason for going to all of the work and expense of maintaining a dual school system. Their purpose is not so much to educate, but to indoctrinate and train, *not to teach scripture truths and Americanism,* but to make loyal Roman Catholics. The children are regimented, and are told what to wear, what to do, and what to think. (Emphasis added.)

Ponder Mr. Boettner's charge that Catholic schools do not teach "scripture truths."

As it happens, a number of Catholic laymen and clergy pondered just that and at the time tried to draw attention to the peculiarity of such a tract being cited as a reference work in an opinion of a Supreme Court Justice. Had Douglas in some similar connection cited the Protocols of the Elders of Zion, or a Kommunication from the Grand Kleagle of the Ku Klux Klan, there would have been some notice taken. But there was no response whatever to these citations. There is a climate of presumption, and it must be worked against. (Thus, on April 3, 1979, reporting that the Supreme Court would hear a challenge to yet another state statute providing bits of aid to parochial schools, a New York law providing expenses for state-required testing, *The New York Times* noted that "The Federal Constitution specifically forbids state aid to parochial schools. . . .") The dynamic of scholarship, which is both truth-seeking and competitive, at length responds to this kind of imbalance. Already the time is at hand when law clerks will have learned as law students that the *Everson* decision is disputed. In time there will be judges who learned it as students also. Just as importantly, Presidents may come to office committed to change. Roosevelt made no secret of his desire to appoint to the Court Justices who would not block New Deal legislation on the basis of a flawed reading of the Fourteenth Amendment. It would be unthinkable today for a Justice to be appointed who held to the *Plessy* doctrine.

The same may come to be true of *Everson.* This is a constitutional check on the Court: Justices are appointed by the President. Already both major parties have endorsed aid to nonpublic schools. It is becoming a familiar position for Presidential candidates since Senator George S. McGovern endorsed tuition tax credits in his 1972

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campaign. It remains for a President to come to office either committed to the proposition as a matter of justice, or able, as a matter of politics, to balance the claims of the nonpublic schools with the fears of the public schools that they will lose whatever the other system gains.

Opinion polls indicate that the great majority of American people believe that educational pluralism is a principle deserving of active governmental support. And it is well to bear in mind Robert G. McCloskey's observation, in his magisterial study, *The American Supreme Court* (1960), that "the Supreme Court has seldom, if ever, flatly and for very long resisted a really unmistakable wave of public sentiment. It has worked with the premise that constitutional law, like politics itself, is a science of the possible."

Debate on the *Gannett* decision began immediately, and soon became almost formal. The Associated Press, for example, distributed to its news staff a prepared statement to be read aloud to a judge who has announced the closing of a courtroom. The statement, described by Louis D. Boccardi, executive editor and vice president of the Associated Press, as "concise and legalistic," objects to any closed proceedings, sets forth the reasons why, and asks for time for further argument before a decision is made. This would appear to be a model reaction, if the validity of the Debate, Litigate, Legislate model is assumed.

2. *Litigate.* The exemplar of litigation as a tactic for bringing the Court back to the Constitution is the prolonged but in the end triumphant effort of the National Association for the Advancement of Colored People to reverse the *Plessy* decision. This is more difficult with *Everson,* for the effect of that ruling is that things don't happen rather than do, and it is not easy to challenge a nonexistent regime. Still, experience argues that those who feel aggrieved need to take initiatives. A former United States Attorney, now teaching law, asks his class in constitutional law to explain why the United States government is *obligated* to provide financial aid to church- or synagogue-related schools. The answer, evidently, lies in the Free Exercise Clause of the First Amendment: an interesting thought, and worth a lawsuit. Harry J. Hogan, retired counsel to the House Subcommittee on Elementary, Secondary, and Vocational Education, has pointed to the potential inherent in the growing practice of teaching "values" in public schools. "The fascinating possibility is that as soon as public schools and universities are required to teach values, then church-related schools and universities will be able to demand equal access to state and federal tax funds."

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The risk of litigation is that it divides. In the end *no* schools may receive support for ethics courses. But, as no other process, it educates the courts.

3. *Legislate.* Legislation is the most direct and open way for the Congress and President to advise the Court of their reading of the Constitution, views which have equal standing under the Constitution, albeit they do not have equal effect. This issue arose directly in the Lincoln-Douglas debates. Lincoln said: "If I were in Congress and a vote should come up on a question whether slavery should be prohibited in a new territory, in spite of that *Dred Scott* decision, I would vote that it should." Douglas was scornful, saying, "if you elect him to the Senate he will introduce a bill to re-enact the law which the Court pronounced unconstitutional. . . . I never heard before of an appeal being taken from the Supreme Court. . . ." Lincoln replied that Douglas "would have the citizen conform his vote to that decision; the member of Congress, his; the President, his use of the veto power. He would make it a rule of political action for the people and all the departments of the government. I would not." Commenting on this exchange, Bickel allows that while deference to the Court is surely in order from the other branches, this cannot be absolute:

> The functions cannot and need not be rigidly compartmentalized. The Court often provokes consideration of the most intricate issues of principle by the other branches, engaging them in dialogues and "responsive readings"; and there are times also when the conversation starts at the other end and is perhaps less polite. Our government consists of discrete institutions, but the effectiveness of the whole depends on their involvement with one another, on their intimacy, even if it often is the sweaty intimacy of creatures locked in combat.

That Congress can abuse its power, should cause no surprise. Indeed it has. Reacting to the Supreme Court decision in *Engel v. Vitale* (1962) which forbade school prayer, the Senate on April 5, 1979 and again on April 9 by margins of 47 to 37 and 51 to 40, respectively, voted to deny the Supreme Court appellate jurisdiction in such cases. This can be done under Article III, Section 2, at least with respect to cases in federal court. (It is contended that the power was intended as Congress's restraint on the Court, corresponding to the President's power of appointment.) But in this case the power was surely misused. Publicly prescribed prayer, voluntary or not, is precisely what "an establishment of religion" is all about and that is what the First Amendment forbids. (In the course of the debate, one Senator rose "to speak as a Christian" about what he

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called the "secular humanism that abounds in our children's schools today." He did not like this and thought "we Christians" should do something about it. One is reminded, from time to time, that this is a Protestant country.)

For all this, legislation is unequaled as a means to influence the Court. Labor legislation was finally accepted by the Court only because state legislatures kept passing bills. Even the venerable Charles Evans Hughes at last was converted. Writing for the Court in *West Coast Hotel Co. v. Parrish* (1937) he derided the "freedom of contract" argument: "What is this freedom? The Constitution does not speak of freedom of contract. It speaks of liberty and prohibits the deprivation of liberty without due process of law."

Similarly, the Congress through legislation has commenced the undoing of the *Everson* decision. First, in the Elementary and Secondary Education Act of 1965, provision was made for compensatory services in schools with high proportions of "deprived" children, of which denominational schools have a more than sufficient share. (In New York City, nuns initially had to teach the children to operate the television sets thus provided, as they themselves were forbidden to touch them. But even such silliness makes its impact.) Similarly, the Higher Education Act of 1965 provided federal funds for "strengthening developing institutions." These were understood to be, in the main, black colleges in the South. But federal administrators, in the manner of bureaucracies, found that denominational colleges in the North often met the criteria and they were given grants accordingly. Half the private colleges and universities in the nation have religious affiliations, and most seem to take part in the now considerably complex system of federal aid to higher education. Mild tensions persist. It was reported that at the First National Congress on Church-Related Colleges and Universities, held at Notre Dame in the summer of 1979, there were complaints of "federal officials who question whether theology should be taught in classrooms built with federally guaranteed loans." But this is the point. Federal officials are now merely nervous about support for activities which, if one were to read *Everson* and nothing more, it would be assumed are altogether forbidden. What is happening, of course, is that American practice is coming in line with that of the other English-speaking democracies where government support is provided to any *bona fide* educational activity, and the communal peace, on this score at least, is maintained.

Consider the Higher Education Facilities Act of 1963. In this law, Congress provided funds to build buildings on college campuses. In

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the course of events, Sacred Heart College (and several other church-affiliated campuses) in Connecticut received such funds. The familiar law suit followed. But the Court in *Tilton v. Richardson* (1971) held that this aid was constitutional on grounds that "There is substance to the contention that college students are less impressionable and less susceptible to religious indoctrination." Now there is, of course, no substance whatever to this. It can only be a matter of time, albeit this could be another generation, before five Justices agree that what is constitutional for 19-year-olds is constitutional for 18-year-olds, whereupon the legal issue will be behind us. The Weis dissent is surely a harbinger of this.

There will remain the issue of public policy. *Should* 18-year-olds receive assistance? That is a different question altogether. It has never been satisfactorily resolved, mostly because opponents have always succeeded in interposing the constitutional question. But it is not a constitutional question.

Legislation is not always to be advised. The press, for example, will want to be cautious indeed before deciding that it wishes Congress to make a law respecting its freedom. On the other hand, it may find it useful for Congress to make laws protecting the Sixth Amendment right of the public to be present at trials. To those who say the Court has decreed that no such right exists, there is Lincoln's retort that a Supreme Court decision is not a "Thus saith the Lord."

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Has this analysis any predictive power? The *Gannett* case will provide a test. As with most cases in which the Supreme Court would seem to be wrong, debate began promptly and it may be forecast that a good deal of litigation will follow. In the manner of *Everson*, one decision will lead to another: clarifying, adjusting, half-apologizing. Legislation will be contemplated: most likely dealing with the public's right to access to the courts, rather than that of the press as such. In the end the Court either will reverse itself, or set forth rules for the closure of courts so narrow and restricted in their application that the controversy will go away. It may be hoped that it does not require a generation for this to come about.

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An end to rental housing?

ROGER STARR

ANYONE who looks at an unexceptional and unattached one-family American house, and then studies an apartment with an equal number of rooms tucked in the midst of 99 others in a six-story apartment building with brick walls, will conclude that it is cheaper to heat the apartment than the one-family house. Less outside wall surface per apartment. Fewer windows per square foot of wall. Heavier, cheaper oil in a larger, more powerful burner. Fewer square feet of roof per room. And so on.

Even if the theoretical advantages of the apartment house in fuel saving are somewhat vitiated because the apartment dweller is more wasteful—he does not pay directly for his heat, while the cost of every gallon of oil burned by the homeowner is, so to speak, brought home to him at the end of the month—the saving is probably real, and very likely significant. Perhaps it costs about half as much to heat a six-room apartment as to heat a six-room house, if both are in the Northeast, in comparable climates.

Apartments offer other advantages in a time of high fuel costs and possible shortages. Denser population patterns make bus or even rail mass transport economical. Stores may locate within walking distance of population centers, and the like.

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These arguments are persuasive to the Department of Housing and Urban Development, and have led the Department to encourage the construction of apartment houses as against one-family homes. But the fuel saving is by no means the most plausible argument. Even more persuasive is the accelerating disappearance of rental apartments from the American landscape, at least in their traditional role. There are two obvious causes of this disappearance: Some are being abandoned or destroyed altogether because they have become uneconomical, while others are being converted into cooperatives and condominiums. Fewer rental apartments are being built than lost to the market. And although one-family home construction is proceeding at very high levels, and the development of condominiums has become an important industry, a large number of households do not want to buy their own homes, and hesitate to invest in condominium or cooperative ownership. HUD worries about what will happen to these households.

As the shortage becomes more severe, the least probable event is that a large number of apartment-house builders/investors will go to work to produce rental apartments. The most probable outcome is that more local governments will pass newer and tougher laws restricting the conversion of rental apartments to condominiums or cooperative ownership. Fearing the "loss" of moderate-rent apartments, more local governments will pass further laws regulating rents.

All this local legislative activity will most likely further increase the deterioration and the abandonment of existing apartment houses, and discourage potential apartment-house builders from building, even in the high-demand sections of areas like central Manhattan and for clienteles like swinging singles, where, and for whom, some are still continuing to build.

Doubtless HUD foresees that as the shortage grows worse and local laws proliferate, Congress will turn to it with a demand that it do something to bring rental housing back into being. Trying to do something for rental housing will be very expensive, and it is unlikely that the effort will be fruitful. The basic difficulty is all too clear: *While the federal government seeks to increase the supply of rental housing, local governments are doing all they can to kill it.* They do this because they interpret much that helps the owners of rental housing as necessarily harmful to their tenants. And they misapprehend what it means to "lose" a moderate-rental apartment. They count as "lost" any apartment whose rent rises to the general market level; but they seem to ignore the loss that occurs when a

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housing unit becomes so dreary and dilapidated that the occupying family moves somewhere else, and a newcomer family must pay more for the same dismal surroundings whose decline and "loss" could have been prevented. Local governments seem to accept economic motives in housing when they proceed from the tenant's perspective, but they apply moral criteria to landlords when they, for example, fail to fix up an apartment because they can get no return on the additional investment. If a tenant complains that rents are too high, his action is economic and natural; if an owner does not spend money because the cost of repairs is too high, he is greedy.

Before embarking on a program, doomed or not, to resuscitate rental housing, its designers should ask themselves: Who needs it? Since immense flows of mortgage money have been stimulated by the Federal National Mortgage Association at market rates of interest, and by the Government National Mortgage Association at subsidized interest rates, both making for large totals of one-family-home construction, who are the holdouts turning up their noses at it, or at condominium or cooperative ownership? Are they worth troubling about?

No one has published a definitive analysis of the households that do not wish to own houses or apartments despite the significant tax advantages that accrue to those who pay their real property taxes and mortgage interest directly, rather than through the rent they pay to the owner of the building. In fact, one of the legislative initiatives of local governments has been to try to blast a middle passage through the Internal Revenue Code, one that would permit renters the same tax advantage open to homeowners and cooperative and condominium occupants. The Internal Revenue Service has so far been entirely unimpressed by this legislative agility. Rental housing could be helped, of course, if Congress allowed tenants income-tax credit for their imputed real property tax payments, but since the owner is already allowed to charge real property taxes as an expense of building operations, it is hard to see how both parties could be allowed to take the deduction without setting precedents of unforeseeable dimension.

The tax laws now offer deductibility only to the taxpayer who is required *by local law* to pay the real property tax. But if local tax laws are amended to make the tenant legally liable for the real property tax, local governments' present legal claims for taxes against the value of the apartment house vanishes, because the apartment belongs to its owner, not the tenant. Local-government

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finance in its present form would go up in smoke if the taxing authorities had to give up their claims against the land and buildings within their boundaries and instead had to sue tenants for defaults in tax payments. By the time a court would render a judgment—of dubious collectibility in any case—the tenant could have moved to another town. So those who fashion these laws must resort to sleight-of-tongue that describes the tenant as "deemed" to be the owner of the part of the apartment house he lives in. But if the tenant defaults on the rent, the apartment-house owner is deemed once again liable for the taxes!

In any case, the households that do not wish to buy must be at both the older and younger ends of the age scale. The younger, of course, do not want to buy because they are not sure what their lives will be like; often they are still unmarried, a situation that makes home ownership somewhat uninviting. While there are ground rules for the dissolution of a sanctified relationship, the courts are still struggling over the distribution of community property when the community is illicit. Many households do not choose to buy homes because their working lives involve frequent moves; they would rather rent and retain mobility. The households at the older end of the age scale also eschew the responsibilities of home ownership. One-parent households generally have greater difficulty in maintaining a home than households in which there can be a division of labor between those tasks needed to keep up the daily round, and those that concern long-term repairs and maintenance; roughly, between the work done by an indoor servant and that performed by a field hand. Finally, the argument in favor of homeowning—that it constitutes an excellent investment—has a dismal reverse side for some households. They read the market as saying that home ownership *has been* a very good investment. Prices are high now because family formations have increased. As the rate of family formations declines, so may the value of houses.

The decline of entrepreneurial interest

Without bothering to guess how much of the potential demand for rental housing comes from each of the sectors defined, or other population groups, HUD has prepared a statement of housing demand and probable production shortfall. (See table on page 29.) A very important qualification must be attached: This table represents the housing shortfall *after* applying governmental subsidies that HUD expects Congress to vote and that would make the de-

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mand for rental housing economically effective (the subsidized units are distinguished in the table from the non-subsidized). If Congress does not vote these subsidies, the demand for many units will not be effective, although most of the same people who would not obtain subsidies would probably continue to feel a subjective desire for improved housing.

The point of the table is that the shortfall is not ascribable to a lack of mortgage money, but to the shrinkage of entrepreneurial interest in building rental units. To an undetermined extent, the entrepreneurial shortfall might be compensated for by the leasing of individual apartments in condominiums and cooperatives by their separate owners, and by the leasing of flats in two- or three-family housing, all of which leasing is still classified by the FHA as "single-family" ownership. In England, where many similar conditions have arisen, the owners of such informal rental quarters are called "amateur" landlords. Unfortunately for the simplicity of discussion, it seems impossible to characterize them generally as either "good" or "bad." Three-family homes have been a very important source of housing supply in New York; four-family homes are typical of parts of Chicago. (Sometimes these are called "granny homes," to

*Multi-Family Rental Outlook (1980-1990)**

TYPES OF NEED AND SUPPLY	PROJECTIONS	
Annual Need	*Low*	*High*
Replacement Family Formation Vacancy Adjustment	400,000	440,000
Rehabilitation of Substandard Housing	125,000	150,000
Total Need	525,000/yr.	590,000/yr.
Annual Supply		
Unsubsidized (FHA & Conversions)	230,000	250,000
Subsidized - HUD (Sec. 8 & Public Hsg.)	180,000	200,000
	–410,000	–450,000
Shortfall	115,000	140,000
Condo Conversions: Total 100,000–150,000 net loss of rental	+40,000	+60,000
Total Shortfall	155,000/yr.	200,000/yr.

* Source: Department of Housing and Urban Development.

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emphasize that members of an extended family may be occupying the units, with two paying rent to the third, who has invested in the ownership.) Where this system works—usually supported in great part by ethnic homogeneity and, more important, common social attitudes on the part of most of the owners and tenants in a neighborhood—it offers an excellent way of life. But encouraging it as a matter of government policy seems difficult.

The table leaves the impression that unless there is a change in the treatment of rental-housing ownership by local government and attention to stimulants by the national government, the housing situation in the country will deteriorate.

The attitudes of local government toward rental-for-profit apartment houses may be economically foolish and self-defeating in the long run, but they cannot be dismissed as baseless. It is true that in San Francisco and New York—alone among American cities—apartment-house owners have provided more than half the total housing supply, and that in other American cities they have contributed a very significant share. But complaints against private ownership and its deficiencies have as long a history as the interest in improving housing conditions. Most housing reform was based on the theory that the deplorable, unsanitary, overcrowded, and dangerous conditions were the result of rapacity on the part of landlords. The implicit assumption was that better homes could have been offered at a profit, had it not been for the cupidity of the owners.

The price of reform

When the passage of laws controlling the structure of houses failed to improve the conditions under which poor people lived, reformers of the late 19th and early 20th centuries placed their hopes in apartment houses that would not be owned by the profit-motivated entrepreneurs of the world around them. They looked to philanthropic capitalists, like Henry Phipps, whose estate is still active in moderately priced rental-housing ownership, or Alfred T. White, who built model houses in Brooklyn in the 1880's that are now being renovated. When the reformers found that limiting the return on housing investment did not alone produce homes that working-class people could live in, they hoped for large developments—such as those owned and financed by insurance companies—in which the immense scale would reduce costs. They also believed in co-operative ownership usually under labor-union sponsorship. Ultimately they came to support government-owned housing, in which

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the full cost of development was assumed by the federal government. These federal programs have flourished and, ultimately, most of them have disappointed their originators—as costs have kept rising, and the incomes of those who cannot afford the full rental cost have remained relatively constant.

Far from considering profit-motivated apartment houses as a natural component of a program to improve urban housing, the legislators had been trained by reformers to regard profit as an enemy: exploitive, rapacious, socially insensitive. (To a great extent they were right: The owners of apartment houses were at least as rapacious, greedy, and socially insensitive as everyone else in an economic world in which the gentle have a difficult time surviving.) The major difference between landlords and other kinds of entrepreneurs is that the landlords are involved in a long, continuing relationship with their customers, one in which the customer pays over and over again for what he already has—i.e., access to an apartment that in the very nature of things is a little bit older and worse each month than the month before. Furthermore, it is basic to this relationship that the supplier, the landlord, cannot increase his net income by adding to the units he has for sale in a building. This is not precisely true, because he can cut up bigger units into smaller units, or could if local laws did not stop him. But unlike a merchant—who can improve his net income by selling at a lower unit price and moving more merchandise—an owner with fixed-sum leases can increase his earnings only by reducing his costs of operation or increasing the rent on lease expiration, in which case the tenant must either pay more money for what he already has paid for over and over, or else get out, of some cost to himself, to say nothing of the difficulty of finding another home.

From this point of view, the tenant feels particularly aggrieved. Locked into a long-term relationship with someone whom he usually never sees, the tenant cannot truly understand why he should be asked to pay again and again for something that the landlord already made. Renewing the lease on an apartment is not like buying a new suit or a steak: Obviously, the tailor or the butcher expended money to make or acquire them. Perhaps they cost more than the previous suit or steak—but they are new, and the purchaser is thrilled by the prospect of eating a fresh sirloin, or wearing a new suit for the first time. An economic relationship in which the supplier cannot increase his volume except by raising his unit price, and the customer has no psychological satisfaction to show for each new expenditure of money, inevitably produces severe tension and

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invites government intercession. As the society matures, and takes the productive process for granted, the intercession inevitably favors the tenant.

Since World War II, in the local-government jurisdictions of the United States, housing legislation—to summarize briefly—has extended government's supervision over rental housing in the following ways: by regulating rents; by annulling the owner's previous right to terminate a tenant's tenure at the end of any lease period without cause; by tightening controls over the various kinds of activities that could be permitted within a residential building; by making more difficult eviction for established causes, including nonpayment of rent; by establishing special courts to deal with housing matters, and condoning so-called rent strikes, in which tenants continue in occupancy without any payment or deposit of rent while their complaints against the landlord are investigated; by refusing to allow owners to remove their rental units from the market unless they prove a compelling need for their own use of them; by forbidding discrimination against tenants on the grounds of race, religion, or nationality, or because they have children; by making rules against pets all but unenforceable; by adding new requirements for heating, lighting, crime protection, and the like to an already long list of housing-code specifications; by requiring janitors to reside within a stipulated distance of the housing they supervise; by finding, as 38 states have, that rental of an apartment by a landlord to a tenant implies that the apartment is "habitable." This last term is left undefined by most, if not all states; the highest court in New York State has ruled that a strike by city garbage collectors renders apartments uninhabitable, and that tenants may abate their rent by 10 percent while the strike lasts!

Many of these requirements can be condoned, and it would be foolish to argue that landlords have not abused tenants on each of these grounds. The problem is that, taken all together, they have imposed obligations on landlords that are extremely difficult to meet in the normal course of business. They have depreciated the value of property by imposing conditions on its use that were not considered at the time the original building was constructed or purchased by its present owner. The warranty of habitability, for example, without definition by the legislature, was interpreted by the New York court to exceed all the legal requirements of the housing codes that are on the statute books. Certainly, any assumption about "habitability" should at least be so carefully defined by law that it cannot be used to put pressure on the landlord for concessions that

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are not intended by the statute. As it is, the potential for arousing caution on the part of prospective builders/owners and their bankers would appear limitless.

One of the important features of such local legislation has been the emergence of strong tenants' movements and tenants' organizations in those states that have significant tenant populations. The body of laws on the books offers immense opportunity for exploitation by lawyers who hope to begin political careers, as many legislators now in office have, by leading "the tenant movement" and doing its work. In addition, federal poverty laws have established, at national expense, teams of lawyers who represent tenants free of charge in their litigation with owners. This is peculiarly unfair in the case of owners of deteriorated tenement houses who can scarcely better afford hiring adequate counsel than the tenants can. In all, it cannot be claimed that changes in the law have improved conditions in older buildings enough to justify the general air of discouragement that their enactment has caused among possible builders of new apartment houses.

The most dramatic evidence of the influence of these changes in housing law can be seen in New York State, where the state's own mortgage program for middle-income housing—the so-called Mitchell-Lama program—bears scars from laws enacted to protect tenants in other buildings. Every rent increase needed to maintain the housing in this program has been contested with the argument that ordinary tenants are protected from precisely this kind of claim. The resulting political impasse has played an important part in the losses sustained by the city in its mortgage program, and which now threaten the state in its own program. Losses—represented by the difference between the face value of their Mitchell-Lama mortgages and the amounts for which the federal government was willing to insure them—reach $500 million. Similarly, the bankruptcy of a number of municipal housing authorities—Boston's most recently—suggests that the atmosphere for the enforcement of the *owner's* rights under leases has become two adverse.

Of all of these new laws, the most difficult for owners to live with is rent regulation—adopted recently in Los Angeles, which is only the latest in a list of cities that grows longer with each tightening of the inflationary screws. Arguments over rent control in its various forms usually fail to explain the reason why even the best drawn of these ordinances ultimately discourage new apartment-house ownership. So long as inflation does not become severe—and the law exempts all new construction from regulation—the construction will generally

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continue. But if inflation becomes more severe, owners will discover that not even the best-drawn legislation will offer a higher cash return on a building than it was earning when the law first went into effect. Thus, the capital value of the property cannot increase over the years, regardless of the appreciation in its replacement cost. Indeed, as the market rate of return on all other investments has increased, the effective value of the controlled apartment house has sunk.

From sheltering people, to sheltering income

In such an investment climate, HUD must seek incentives for investment of time and money in ownership. To examine its problems, one should look at what it had to do in the past.

In 1945, years of Depression and war had left the nation's housing supply depleted, while the intense economic activity of the War years had raised incomes and prices, creating an immense economic demand for new places in which to live. Many apartment-house builders, schooled in the pre-War era, were impatient to return to the work with which they were familiar. The problems that obstructed their development plans were two: a formidable increase in the costs of construction over the levels they remembered from pre-War days, and a shortage of mortgage money from the lending institutions. The two problems were related but not identical. The banks were hesitant to invest their depositors' funds in new multi-family housing that would have to compete with older housing that had been built with cheaper materials and labor—and now substantially depreciated—and that could profitably be rented at much lower prices than new housing. The banks were also afraid of the effects of continuing rent control.

The federal government was able to push multi-family housing along rapidly in those years by taking two steps that, incidentally, were opposed by many at that time who felt that the profit-making rental apartment house was an inappropriate vehicle for government housing policy, and that the government should do the job itself. Despite this opposition, the Federal Housing Administration was given the authority to do for multi-family rental housing what it had been doing for one-family homes before the War, and was again doing for that sector with the added help of the Veterans' Administration. For multi-family housing—intended to be placed on vacant sites in and near the cities—the FHA "608" program offered builders an easy way to finance their developments. They

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could get a mortgage guarantee covering more than 90 percent of the theoretical or estimated cost of their work; in some cases, the estimates were so generous that the mortgages were insured for sums that were greater than the out-of-pocket costs of the work. (Everyone forgets that a developer has costs of time that run long before he hires the first architectural draftsman.) On the strength of the insurance, the banks were happy to lend the money. The second problem was taken care of by the repeal of rent control along with the abolition of the Office of Price Administration in 1946, even though some local jurisdictions rushed into the breach with their own rent control immediately thereafter.

Many units were built with "608" money. Some were failures, as was bound to occur in a riskless economic environment: They were built in the wrong places to attract tenants, though "right" from the point of view of attracting government mortgage insurance. But most provided reasonably good, though architecturally inane, housing at a time when it was needed. The "secret" of the stimulation of the 608 program is no secret: With little or no equity in the project, the owner's rate of return on his initial investment was astronomical. The houses—the successful ones at least—produced net income. They were salable. The fact that 608 insurance provided what the press called "builders' windfalls," i.e., they were able to borrow more money on the security of the government guarantee than they had spent in building the project (though not always, by any means), obscured the real purpose of the builders, to whom the windfall was sometimes rather embarrassing (even though they fought hard to get it). *Their real purpose was to create an investment that had value on its own: a structure that could command rentals big enough to cover all operating costs and leave a profit.* They sought—like most investors in a normal market—to minimize their personal cash commitment, but they were seeking to build an investment valuable on its own terms.

It is demonstrable that this incentive no longer works except in the areas with the highest demand values. When the government in the 1960's turned away from public ownership of housing for the poor and lower-middle-class families of the urban centers and tried to interest developers in owning apartment houses in which the rents would be heavily subsidized, either (FHA-236) by grants to reduce the effective mortgage-interest costs or (Section 8) by grants or federal cash set-asides big enough to cover all costs, it had to supplement these renter's subsidies with a special and very large subsidy to the developer. This last subsidy came in the form of an

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income-tax concession based on rapid depreciation of the value of the building. Since the building is in these cases largely—indeed almost entirely—financed by mortgage money, the builder's equity investment is relatively small in cash (though usually quite high in time and preparatory work.) When the federal government permits the owners of an apartment building intended for occupancy by low- and lower-middle-income families to charge themselves (as a non-cash expense) twice the normal rate of depreciation on the declining value of the building (though not, of course, the land), it allows them to escape paying any income taxes on the operation of the building. Far more important, it allows them to apply their share of this non-cash loss to income they may be receiving from any other source, provided the ownership agreements are properly drawn.

In the case of this type of apartment house, the value that the builder tries to create is not the value of the housing investment itself. That investment has become unattractive in the long run because of the continuing problems of inflation, the need to raise rents, and all the other problems exacerbated by local-government intervention in the relations between landlord and tenant, almost entirely on the tenant's side. Instead of creating *housing shelter* for customers to live in, the builder creates *tax shelters* for a new kind of customer to put other income in. His customers are no longer those who live in the building—except for the period of about 12 years that covers the tax-shelter effectiveness and meets government restrictions. His customers are rather the people who buy ownership rights from him and enable him to sell his building and make his profit—in cash or more probably notes—before the building is actually completed.

It is easy to calculate the cost to the federal government of the subsidies paid to bring the rents down to levels that low-income and lower-middle-income tenants can afford in new or rehabilitated apartment houses. The federal government simply reserves for each apartment covered by a Section 8 contract a fixed sum of money to be used each year, as needed, to supplement the tenant's rent.

The fixed sum is the difference between one-quarter of the lowest income any resident in the project is expected to earn (or the local welfare allowance for housing, if the family has no income) and the prospective approved economic rent of each apartment, including both operating and capital costs.

In New York, and other high-cost centers, the reserved sum is more than $7,000 per family per year; in Boston, it is $5,500. Over the

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term of a mortgage of 40-years duration, the reserved sum, in present dollars, would be $280,000 per family in New York; $220,000 in Boston. That total reserve may never be paid, because many families will earn more than the minimum income and pay more than the minimum rent, reducing the need for subsidization. But, in fairness, the possibility also exists that operating costs will rise more steeply than ever, increasing the subsidization need for some families to more than $7000 a year.

There is another cost of tenant subsidy, the cost to the local government of tax exemption, frequently necessary in order to bring the economic rent of the proposed development down to the level approved by the federal government. This loss is difficult to calculate, because no one can be sure that the tax-exempt housing would have been built without tax exemption; but if it had not been, other, perhaps older housing would still be in use, returning some real property taxes to the city. Finally, one must consider the cost of the entrepreneurial subsidy, the tax shelter.

The costs of the tax-shelter program are difficult to calculate, but clearly immense. Congress frequently tries to curtail or eliminate them from housing, but this is a doomed effort. Local government has made housing investment so unattractive *despite the tenants' subsidies* that even if all normal economic risks were removed from ownership, private rental ownership would not increase without tax shelters. The real trouble with this program is not so much its cost as that it concentrates ownership interest in the hands of those who lack permanent concern with the value of the physical investment.

What, then, can be done to make ownership in rental housing for moderate-income families attractive, assuming that the families are given substantial enough federal rent subsidies to cover all approved costs? Very little.

It would be helpful, one supposes, if the federal government refused to provide subsidies in any state that imposes its own warranty of "habitability" on a building already subject to federal subsidies, federal rent regulations, and federal inspection. But this help is unlikely. Congress, after all, is made up of locally elected representatives who are subject to many of the same pressures as their colleagues in local legislatures. In addition, the developers of federally subsidized buildings would not have a profound investment interest in them if there were not a time when they could sell them, free of subsidy, to a normal investment purchaser: Local laws would then take over, diminishing investor interest in the buildings, if those laws included the issues that now trouble prospective owners.

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Even now, the FHA has the right to supersede local rent regulation when it considers its mortgage insurance of a multi-family development imperilled by excessive restrictions on rents. But the FHA has not shown great courage in overriding local restrictions, especially when Congressional interest has been aroused by the affected tenants. The general spirit of federal/state relations seems to thwart the federal government if it attempts to reduce economic regulation by local government. The federal government has shown much more courage in the area of personal discrimination, and in supplementing local regulation of business with even tougher restrictions.

The situation seems hopeless, but perhaps it is not entirely so—if local governments, perhaps in response to court decisions that have not so far occurred, took some steps to redress the balance between landlords' and tenants' interests that have become so manifestly unbalanced in the past 20 years.

If such a swing does not take place, owners will continue to inch forward to a redefinition of their economic role in supplying housing. As gasoline sellers have gradually moved to require their customers to help themselves, so owners of new rental property may try to design their buildings for increased tenant self-help. The traditional European pattern of supplying neither heat nor hot water nor air conditioning may increasingly find its way here. Not that the buildings would be without these services, but rather that they would be arranged not to work without being paid for: the shilling-in-the-gas-meter, on a vastly more sophisticated scale. Low-rise buildings without elevators, separate hallways that will be entirely the responsibility of tenants to clean, a rent structure with no provision for making repairs within the apartments, all repairs for tenants to be billed separately—these are some of the current dreams of some owners. They present immense problems, but then the problem they attempt to solve is also immense. It remains absurd that, at a time of high family income, the industry catering to such a basic human need as housing has been grossly discouraged by open-ended overregulation, even if often directed against a genuine cause of complaint.

The most likely outcome, at least for the foreseeable future, is precisely a continuation of the present trend of legislation, the further growth of complaints that no one wants to build for the middle-class family as tenant on any terms, and the reality that no one will build for the heavily subsidized group below the middle class unless a tax shelter is added to the tenant subsidy. The picture is not bright.

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The post-shelter society

GEORGE STERNLIEB & JAMES W. HUGHES

A milestone passed virtually unnoticed at the end of 1976. In the first six years of the decade of the 1970's, the nation's housing inventory secured a net addition of approximately 11.5 million units, a level of increase surpassing that of any *full* intercensal decade in the nation's history. Subsequently, in 1977 and 1978, over 4 million additional private-housing starts were initiated—including near-record annual totals of single-family units—thus ensuring the destiny of the 1970's as the most prolific housing decade ever.

Not only have large *absolute* quantities of housing been delivered over the present decade, but also by all extant measures the quantity of housing delivered *per household* and/or *per person* has increased. Coupled with ever-increasing amenity packages—the housing industry's major market failure was the "stripped-down" single-family home—and substantive qualitative improvements, this nation's housing product should be, and is, the envy of the world.

So the housing industry is rich, and it is strong. But why, despite the track record, are the industry and all the people involved with housing as insecure as they are?

Certainly, it cannot be due to the impending demographics. It is readily apparent that the nation is in the middle—the beginning

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middle, not the mature middle—of the biggest demand for housing that it has ever had and probably ever will enjoy. This is the result of the heralded "maturation of the baby boom." (Remember babies? It was a long time ago—for those young enough not to recall, they are tiny people.) The babies of yesteryear are aging into their prime home-buying years. Between 1978 and 1985 there will be 13 million more Americans added to the 25-to-44-year-old age bracket, an increment replicating that of the 1970 to 1978 period. And with the household-size parameters shrinking ever smaller, the surge in demand appears sure. The baby-boom generation will be looking for housing; they will be looking to the housing industry for housing. So why is the housing industry worried?

Inventing the future is an art form whose foundation is past experience. Our vision of what is to come is limited by history. No matter how well we cloak this limitation, regardless of whether we use regression analysis, basic-trend extrapolation, or some variant of "gut intuition"—the foundation is historical. It is useful, therefore, to examine briefly how things were in the past, and what is happening today, and then explore the apprehensions that are associated with an uncertain future.

What did "history" do right? First of all, there was cheap land, throughout our experience up until the early 1970's. The cost of land as a percentage of the selling price of a house was in the vicinity of 12 percent. There was such inexpensive land that, periodically, overseas investors would come to the United States and be overwhelmed by the bargains. Shrewd brokers would take them on tours, point to the land values, and foreign investors couldn't wait to put up their pounds, or francs, or marks, as the case would be. In general, they got skinned and boned—because they couldn't believe how cheap and plentiful our land was.

There was also cheap money. Whether it was in industry or whether it was in housing, money and risk capital were inexpensive. There was a belief in the dollar—not great fear about lending it for long periods of time. Some may remember the 4-percent mortgage. Some may even remember the days of FHA and 3-percent mortgages. A lot more may remember the "Magic Fives." Those were five-year, five-percent Treasury notes and they were magic. Then there were the "Sexy Sixes"—those were six-year, six-percent notes. They came a year or two later—and they were magic. And now we have the not-too-glamorous, going-on-10-percenters.

What did the housing industry do right? It understood American consumers, and was able to provide a product they wanted. It was

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able to improve the product, trade-up the product, give details to that product, and impart tremendous value to that product. These were values that the consumers could see, taste, feel, and use; they were not hidden values but consumer values. They were not great planning values, maybe not great elite values, maybe not esthetic values, but they were consumer values. It is not difficult to recall the early era of the tract house when the intellegentsia used to joke about it. The classic *New Yorker*-type cartoon was a harried commuter, a little bit under the weather, trying to come home to his Levitt house or equivalent and not being able to remember which of the many identical houses was his. On the other hand, when he found it, he *loved* it.

There was also a relationship between shelter costs and incomes which permitted an enormous escalation of housing standards. People moved upwards from the house that Levitt and a great many other people made famous shortly after World War II—an 800-square-foot house, with one-and-a-half baths, and a second floor that was only roughed out (and in some cases, it was pretty rough). By the mid-1950's, the newly built house in America had a median size of 1100 square feet. Currently, it exceeds 1600 square feet. The middle class moved from a house that was "stripped down" to a house that was a finished machine for living. The industry detailed that house—let us repeat again—*in a fashion that made sense to the consumers.* They were given value that they could use and see and believe in. America's middle class was made, in terms of housing, the envy and the bewilderment of the world. Only the very rich in most countries could live as well in terms of housing as our middle class was living. The United States evolved from a country which before World War II was largely one of renters (most of us have forgotten that) to one in which two out of three households are now owners.

Despite the deterioration of many of these attributes in the decade of the 1970's, the performance of the housing industry—its output—reached unprecedented levels. But this expansion was based on fears as well as needs, and therein lies the problem.

The pyramiding of fears

What fears? The 1970's have rapidly given birth to a new phenomenon—the era of the scared American. There is an increasing belief that the future is not going to be as good as the past. It is an insecurity that manifests itself in the question, "What does

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America do so uniquely well that it can live as well as it does?" Why this national insecurity?

The first and foremost reason is the condition of the dollar, that once-fabled currency. The real essence of genius is distinguishing short-term dislocations from long-term shifts: "Have we caught cold or do we have cancer?" Is the dollar's illness, for example, a momentary aberration, or does this mark the end of the American era in which we could do anything better than anybody else? The answers to such questions express a growing negativism, which manifests itself in a variety of fashions. An appropriate analogy to them occurs in England where the pet phrase that evolved over the last generation is, "I'm all right, Jack." In other words, "I've got mine. You take care of yourself. I'm going to hang-on to mine because it's not going to get better. I'm going to take my chips from the table as best I possibly can and just hang on."

Paradoxically, it is this mood which has been the major prop of the short-term prosperity of the housing industry. Housing investment increasingly has become the preferred vehicle in the flight from the dollar, with levels of implicit and explicit leverage expanded not merely through formal mortgage instruments, but also through consumer overextension in terms of share of income resources devoted to housing investment. But there is a "feedback" mechanism at work here. For at the same time, overinvestment in housing serves as a crucial factor in undermining savings and investment. A decade ago, speculators in high-technology stocks and the buyers of mutual funds were the providers of the wherewithal that made industrial-investment costs relatively cheap in the United States. Now he or she is increasingly devoting his or her assets to housing. The issue of pre-emption of growth-productive dollars by housing investment becomes increasingly worrisome.

Indications are beginning to surface that there has been an overallocation of the nation's resources to housing in order to achieve the success of the 1970's. Perhaps the "laws of housing physics" are beginning to assert themselves. The outpacing of income by housing costs may be a consequence of the magnitude of the wealth the nation allocates to housing; the complement of this phenomenon—the inadequate replenishment of the nation's economic infrastructure—then tends to undermine the growth of personal-income resources (as a result of stagnating economic productivity). This "feedback," in turn, may well serve to abort or terminate the housing improvements evidenced to date.

The willingness of consumers to devote almost extraordinary

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shares of income to home ownership—creating, at least until the present, virtually insatiable demand—has in itself directly served to escalate the upward surge in housing costs (a demand-pull phenomenon). This dimension of the flight from the dollar breeds a mood of personal "fiscal conservatism" that is a poor setting for investment and growth. Owning housing is to Americans as gold Napoleons in the mattress were to the French. Scared people are not risk takers except in ultimate desperation. Scared people say, "Stop the world, I want to get off—the risk factor is too high." And this attitude is also affecting the housing industry from the production or supply side, with a cost-push factor reinforcing the dynamics established by demand.

A major dimension of the latter phenomenon is skyrocketing land costs. Land now accounts for 25 percent of the value of the finished house in America; it is not because there is less land than there used to be, it is because there is less *developable* land. Not only have a variety of stipulations been written into land-use regulation, but there is a more important factor—enormous uncertainty even after a piece of land is purchased. Title is taken to that land, money and improvements are put into it, and at any stage of the game one can discover that the nominal rights of usage have been vitiated.

The developed piece of land must pay for the risk factor, the delay factor, and for the builder's failures with other parcels; and the number of failures is enormous. City councils and planning boards, in general, have more staying capacity than developers. There is one community in New Jersey, a town of 6,000 people, which has generated legal bills of $300,000 in order to stop a development. It is not certain that if the city fathers (or mothers) had approached the electorate and said, "From each and every one of you, we are going to take $50," whether they would have gone through the legal struggle or not, but that's what they are paying. The developer, in this particular case, has an investment of over $7 million. And though ultimately he may win, "ultimately" is a long time. In the meantime, money costs money and uncertainty costs money. The consumer of the finished product will have to pay those costs.

Short of legal entanglements, the municipal tactics center on "frontloading." Developers must create a residential infrastructure that is virtually armor-plated, that assumes the burden of *all* future risks of growth. No matter that access to the development is an ancient two-lane county highway and the probabilities of additional

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public burden minuscule, the development must be a completely self-contained package in the broadest of senses. The same fear that fuels such requirements shows itself in consumers' willingness to pay any price to secure a stable port for the future. Little question is raised of the trade-offs: Would the future be served better if the resources consumed by this phenomenon were invested in more productive enterprises?

What the housing industry did very well in the decades prior to the 1970's was sneered at by planners, was an absolute anathema to economists, but made pretty good economic sense to consumers: It built stripped-down developments. It was not the house that was stripped down, it was the infrastructure, the basic support elements. The development may have started off with septic tanks and ultimately it would need sewage facilities. There may not have been appropriate provision for schools, fire stations, police, and the like. And, from an economist's point of view, that's poor planning. But over the course of the years, these amenities were added. All enlightened observers said how inefficient this lag process was. *What was not appreciated was that such a process of building and adding to housing and development was done in a fashion commensurate with the consumer's income life-cycle.*

People of relatively moderate incomes were permitted to buy into a stripped development. That stripped development had to be added to—and it was added to. Additions were costly—and people complained. But at the same time their incomes were growing; they were young people and hopefully just at the beginning of the rise in their own income cycle. And it worked.

Now we are "frontloading" all of our uncertainties. Dedication of land is required as if every little development were going to end up being New York City. The developments are better, and they are going to last a long time. The only problem is that fewer and fewer people can afford them!

The uncertainties of the process have caused a basic split in the industry. The backbone of building in America used to be the developer/builder who worked on a relatively small scale. But the uncertainties of land use cause a specialization of functions. On the one hand, there are people who develop raw land into finished lots —by fighting with zoning boards, hiring consultants, taking risks— and who have a half-dozen land parcels going at once, so that if one aborts they still have something to sell. Builders, on the other hand, buy these finished lots. *What results are two overheads, two profits, a relative level of inefficiency—and we're paying for that.*

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Fragmentation, consensus, and the merchandising of virtue

A consensus used to exist: The bulk of Americans and their representatives believed in housing for the middle class and for the working class, and society was willing to put aside other interests in that cause. Some place down the road, the consensus was lost, and now the issue is whether it can be put together again.

To replace fragmentation with consensus is a very difficult task. As matters are now in the Dance of the Seven Veils that is the relationship between the developer and the community, there seem an infinite number of gyrations, each threatening the project's life.

Let us say that a community takes in a major office park with 6,000 workers. The community is zoned for 3.5-acre (minimum) residential lots. Suit is brought by a prospective housing developer who owns 1,000 acres of residential land with such zoning, on the grounds that it violates whatever municipal regulatory rights exist under the police power. The courts respond: "You're absolutely right!" The attorney for the municipality, questioned by the press as he is leaving the courthouse after the suit (which has, by the way, dragged on for six years), responds: *"We are going to hire an environmentalist."*

What has evolved is environmentalism as a play-for-pay profession and, in its less sanitary fashions, as a version of *This Gun for Hire.* The most unlikely places in the world are discovered to be aquifers, or tracts Indians had traversed in some distant past. That is not to deny the significance and the importance of environmental or archeological considerations. It is to indicate that a world that is looking for weapons will find them, use them, and misuse them. The issue of subdivision controls and building codes of one kind or another are troublesome enough. But with zoning getting buffeted somewhat in the courts, new veils, if you will—new ways to curtail development—are being discovered.

The issue of land clearance in North Carolina illustrates some of the problems. The citizens of one North Carolina community were asked if they wanted smoke in the air, and their answer was quite appropriately, "No, I don't want smoke in the air." With this endorsement the municipality passed a "no-burn" ordinance, because the electorate had said that they didn't want any smoke. The only problem was that the cost of land clearance increased by $4,000 an acre. If four units per acre are being built, this represents $1,000 in front-end money per unit. Nobody went to the electorate, and said, "Which would you opt for—housing that is going to cost $1,000 a unit more or no-burn?"

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What happened was the merchandising of a single dimension of virtue—not a choice between rival virtues. The real problem in a democratic society with an electorate sensitized as is our own, is "How are complex questions merchandised?" It should be reiterated that the issue is not sin versus virtue. We are all, one hopes, in favor of virtue; the real problem is the costing-out of alternative virtues. Now that is a very real problem. Not very much help is coming from anybody, and certainly not from the federal government, which is contributing to the problem by funding only one side of the debate.

How do we put together a housing consensus? There is one school of thought that says, "We can't." Now that the nation has housed the bulk of Americans pretty well, they say, it's very difficult to put together anything for the remnant. Let us hope that is not the case.

The problems are particularly exacerbated in large-scale developments. Consider, for example, a planned-unit development in six-stage construction. For the people who move in initially, there is tremendous satisfaction. By the time the third stage of the development is attempted and final approval is required, the same people who were housed in the first two stages are saying "Enough is enough, we like it the way it is."

A post-shelter society

Again, this is a by-product of a scared America. *What has transpired is the shift from housing as shelter to housing as investment.* Ours is now a post-shelter society and this is perhaps a condition unique in its depth to our own time. Housing in America is much more important as a form of investment, and of forced savings (and tax savings), and as a refuge from inflation than as a refuge from the elements. This by no means is to imply that all Americans are well housed—all too many of them are not. It does indicate, however, that the "safe, sound, sanitary" provisions of a generation ago no longer have relevance to the house search by middle America —the bulk of the voters—of today.

Long-term, chronic inflation of the duration and extent which we are undergoing alters behavior with equivalent vigor. The first question asked by the home buyer in a good many areas is not, "Do I like the house?" That was a question of a previous era. But rather: "If I buy it, will I be able to sell it? And if I am able to sell it, will I be able to keep pace with inflation? Because if I fall off the train and make the wrong housing buy—or, God help me, buy

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in the wrong side of town, or worse yet, buy in the wrong town—it may be a good shelter but I'll never be able to get out from under it. I'd be immobilized forever." The fear of "falling off the train," strengthened by the whole new housing picture that has evolved, is part of the flight from the dollar.

Historically when three new houses were built, two of them went to first-time home buyers, one of them to a current homeowner. Currently when three new houses are built, two are secured by trade-ups (current owners), with only one to a first-time home buyer. Who is the trade-up household? It tends to be one that, in terms of family life-cycle (the number of progeny and the like) does not need a bigger house. It is somebody who is saying, "You know, we paid down the mortgage on the old place, the stock market is no good, and the last fellow who invested in a mutual fund hung himself the other day, so we will buy more housing."

Now, like a good many things in life, that is a generally positive thing—positive if there is only some of it—but it can be calamitously destructive if there is too much of it. One of the reasons for inflation in housing costs, as we have suggested, is this desperate feeling that "I've got to have something real." For the middle class in America, there is nothing more real than a house. In an age of inflation, they may even be right.

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Medical schools and the "entitlement ethic"

ROBERT D. BEHN & KIM SPERDUTO

In the early 1960's the United States faced a "doctor shortage." John F. Kennedy, less than three weeks after becoming President, sent Congress a special message on U.S. health and hospital care which said, "Adequate health care requires an adequate supply of well-trained personnel. We do not have that adequate supply today—and shortages are growing." Kennedy proposed federal support for medical-school planning and construction, and for medical-student scholarships.

Two years later, in a direct response to the widely perceived shortage, Congress enacted the first health-manpower bill, whose "primary purpose," said committees in both the House and the Senate, was "to increase the supply of professional health personnel." The 1963 bill—modest by today's standards—inaugurated direct federal support for medical education by providing medical schools with construction funds and medical students with federal loans.

In 1965 the law was amended—in part, in response to the financial distress of medical schools—to provide direct institutional support. "Basic Improvement Grants" were authorized at $12,000 per school plus $250 per student, but only for medical schools that expanded their enrollments by 2.5 percent or five students, whichever was greater. The federal government thereby established two new and

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important health-manpower policies: It provided medical schools with funds for operating expenses, and it conditioned that support on actions to be taken by the medical schools to achieve major national objectives. The explicit *quid pro quo* was that in return for operating support a medical school would have to expand enrollment to eliminate the doctor shortage.

When the legislation came up for renewal in 1971, it was generally believed that the nation had a shortage of 50,000 doctors. A year earlier the Carnegie Commission on Higher Education had released an influential report stressing the seriousness of the problem:

> *The most serious shortages of professional personnel in any major occupation group in the United States are in the health services.* . . . Whether or not one accepts as accurate the estimate of a current shortage of 50,000 physicians, . . . there is no question, in our judgment, that an *acute shortage exists.* (Emphasis in the original.)

With the goal of increasing enrollments by 50 percent, the Commission recommended "greatly augmented public financial support" for medical schools, including annual operating assistance of $4,000 per student. Meanwhile, the Association of American Medical Colleges (AAMC)—the medical schools' very effective representative in Washington—was advocating its own "program for the continuing operating support of medical education" that would provide medical schools with $5,000 per student per year.

The 1971 act, which extended health-manpower legislation through June 30, 1974, significantly increased the authorized levels of general operating support. The Basic Improvement Grants were replaced with "capitation grants" of $2,500 per student for the first three years and $4,000 per student for the last year of medical school. Federal expenditures for general operating assistance increased fourfold—from $21.8 million in fiscal year 1971 to $95.5 million in fiscal year 1972.

But once again these monies were not "free." Congress required schools that would receive capitation grants to increase first-year enrollments annually (by 10 students if the first-year class was less than 100 students; by 10 students or 5 percent, whichever was greater, if the first-year class was larger than 100 students). The House Committee "reporting out" the legislation to the House floor stipulated the *quid pro quo* in no uncertain terms: "[T]he committee feels strongly that if [medical] schools are to receive assistance of the magnitude proposed in this bill there should be results—there should be increased manpower." Indeed, the committee compared projected medical-school graduates and total number of physicians,

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with and without the legislation, and concluded that the act would eliminate the doctor shortage in roughly half-a-dozen years.

And that is just what happened! When the legislation expired in mid-1974, concern about the "doctor shortage" had dissipated; some were even worrying about a "doctor surplus." And when the legislation was finally renewed in 1976, the act stated: "The Congress further finds and declares that there is no longer an insufficient number of physicians and surgeons in the United States." *Yet Congress did not terminate capitation grants to medical schools; it continued the program.*

Why? Why was an obviously successful program not terminated after it had achieved its objectives? The answer provides insight into the termination process—a struggle involving not only "terminators" who wish to eliminate a program and "defenders" who seek to maintain it, but also "activists" who seek to utilize an established program to pursue new policy objectives.

The doctor shortage disappears

Evaluating public policies is a most difficult task. Objectives are multiple and conflicting. Indices of performance are difficult to define, measure, and interpret. Nevertheless, to the extent that the purpose of the capitation-grant program was to increase the enrollment and output of the nation's medical schools and thus to increase the number of physicians in the country, evaluating the program's performance is relatively simple. And the results were impressive.

During the first decade of health-manpower programs, medical-school enrollments and graduates increased dramatically. Over these 10 years, the growth in all the relevant indices (number of medical schools, total enrollment, first-year enrollment, number of graduates) was about twice what had occurred over the previous 30-year period. For example, from the 1930-31 academic year to the 1960-61 academic year, total medical-school enrollment grew by 38 percent; from 1963-64 to 1973-74, it grew by 58 percent. Since changes in total enrollments (and graduates) necessarily lag behind changes in first-year enrollments, first-year data probably provide the best measure of the response to federal financial incentives. These results are even more striking: From 1930-31 to 1960-61, first-year enrollment grew by 29 percent; from 1963-64 to 1973-74, first-year enrollment jumped 62 percent.

In 1961 President Kennedy had called for a 50-percent increase over 10 years in the capacity of medical schools, and during the

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first decade of health-manpower legislation (1964-74), graduates increased from 7,336 to 11,613—or 58 percent. The Carnegie Commission in its 1970 report had called for a "50-percent increase in medical-school entrant places" by 1980, and for some specific interim targets: 15,300 places by 1976 and 16,400 by 1978. *Both of these interim goals were exceeded.*

Of course, increasing medical-school enrollment was only the intermediate objective. The ultimate goal was to eliminate the doctor shortage. Again, the aggregate numbers are impressive. The total number of active physicians rose from 250,000 in 1960 to 363,000 in 1975—an increase of 45 percent in only 15 years. The Office of Management and Budget (OMB) declared, "The United States is well-supplied with total numbers of health manpower." [1]

Perhaps the change in public attitudes that led to the new federal policies also directly influenced the medical-school deans to expand enrollments. Certainly some expansion would have taken place even in the absence of federal financial incentives, but it is difficult to believe that such major increases would have occurred without public financial support. In short, the federal government set out to expand the medical-school enrollments and the number of practicing physicians—*and it succeeded.*

When the capitation-grant legislation expired in mid-1974, success at boosting medical-school enrollments and bettering the physician-to-population ratio provided a basis for challenging continuation of the program. Indeed, from late 1973 through late 1976 (when—after two temporary renewals—capitation was finally re-enacted) the merits of the program were continually debated. OMB was hoping to make cuts in the program, if not phase it out entirely. Some members of Congress were proposing radical changes in health-manpower legislation. And even within the Department of Health, Education, and Welfare, there was sentiment for eliminating direct institutional support and replacing it with increased direct student aid.

[1] Because the U.S. population is increasing, however, the number of physicians must also increase just to maintain the same availability of services. Therefore, a common measure of supply is the physician-to-population ratio, often expressed in physicians per 100,000 population. For this index, too, the data showed significant increases. Physicians per 100,000 increased from 148 in 1960 to 174 in 1975. This 1975 ratio greatly exceeded the most optimistic of the Carnegie Commission's 1970 projections—a 1982 physician-to-population ratio of 171.3. Moreover, at some point in the late 1960's, the nation's physician-to-population ratio passed the 1-to-650 mark (or 154 physicians per 100,000 population) that the American Medical Association has declared to be the appropriate ratio.

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If the deans of the nation's medical schools had not already sensed this changed climate, HEW's Assistant Secretary for Health, Dr. Charles C. Edwards, eliminated any misconceptions when he told the AAMC in November 1973, "It is not an idle suggestion to imply that one of the courses open to us is to allow existing health-manpower legislation to lapse." After citing the $3.5 billion spent for health manpower over the previous decade, Edwards continued his remarks:

> Plainly, in my judgment, we now have to ask: What has been the return on this investment? If much of that vast sum of money was spent, as most observers would agree, in response to predictions that the country was facing a critical shortage of physicians and other health professionals, then we now have to ask whether the increased enrollment levels are sufficient to assure an adequate supply in the future. And if they are, then this obviously has some major implications for the federal health-manpower effort.

In addition, said Edwards, there was an ethical issue involved in capitation grants. Should the federal government subsidize the education of persons who will shortly be joining the nation's most lucrative profession?

> [F]rankly, we are now questioning very seriously whether it is appropriate for the federal government to bear so substantial a share of the cost of preparing individuals for careers that offer about the highest earning power in our society. . . . We simply have to question whether taxpayers should continue to be expected to subsidize tuition costs for medical students but not for other students whose income expectations fall far below that of physicians.

The final argument against capitation grants was that if medical education was to be subsidized the federal government should support students, not schools. "There is a general argument against institutional aid," explained Paul H. O'Neill, Deputy Director of OMB. If you give the students the money and let them select what school to attend, you will let the market determine where the resources will go. If you give the schools the money, you build rigidity into the system.

In sum, there existed a number of strong arguments for terminating capitation grants. The program had worked—and amazingly well. Medical-school enrollments had increased rapidly, and the doctor shortage had disappeared. In any case, taxpayers should not have to subsidize the education of one of the most lucrative professions. And, if they did, the money should go directly to students, rather than to schools.

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The federal responsibility

In the 1971 legislation, Congress declared the country's medical schools to be a "national resource." This frequently cited appellation provided and underlying justification for the various arguments in favor of continuing and expanding the program. Since the medical schools are a national resource, it was said, the national government should support them financially, and capitation grants were how to fulfill that obligation.

This federal responsibility for assisting the medical schools, many argued, derives from a federal responsibility to provide health care: Since the public is entitled to health care, the federal government has a responsibility to ensure that they receive it, and medical care cannot be ensured unless there exists a continuing supply of doctors.

Were the federal government to terminate capitation grants, many medical schools would be in serious financial trouble. Indeed, the 1971 legislation had been designed, in part, to relieve such problems. (In fiscal year 1970, 61 of the 102 medical schools had needed special federal support to alleviate financial difficulties.) Congress explicitly stated that the financial stability of the medical schools was necessary to achieve its other health-manpower objectives and, in addition to capitation funds, authorized special financial-distress grants. Financial stability was also achieved by the capitation-grant program, which provided the medical schools with regular support. And although the amount of that support depended upon the vagaries of the annual appropriations process, capitation per student increased from $561 in fiscal year 1970 (under the old, basic-improvement grants) to $1,972 in fiscal year 1975. It was $1,537 in fiscal year 1976.

The paradox was that by solving the financial-distress problem the federal government created a new one: financial dependency. The government was providing nearly 50 percent of medical-school revenues through research contracts and health-manpower-training programs. Medical schools also received federal funds through Medicare and Medicaid.

The AAMC's annual "Institutional Profile" reveals that medical schools differed substantially in the amount of support they received from capitation grants. For the 1975-76 academic year, capitation assistance ranged from zero for one institution up to $2.625 million for another. That year, 31 schools received over $1 million each in capitation funds. The AAMC also provides data on federal capitation support as a percentage of each school's "adjusted regular operating expenditures," and suggests a "possible interpretation" of

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this ratio, a "rough index of each institution's degree of financial dependence on federal capitation monies." For 1975-76 this fraction ranged from zero to 18 percent. For 20 of the 111 medical schools reporting, capitation income was 10 percent or more of expenditures, and for 65 of the schools it was 5 percent or greater. With over half the medical schools deriving 5 percent or more of their income from capitation grants, dependency was clearly a problem. For though 5 percent seems a small fraction of total expenditures, abruptly removing such an amount from a budget dominated by fixed costs could result in bankruptcy.

For those who advocated continuation of capitation grants the logic was simple. The financial dependency of the medical schools was a direct result of past federal policies and thus a continuing federal responsibility. Dr. Thomas Kennedy of the AAMC described the medical schools' plight picturesquely: "In the short term, we're pregnant. You [the government] made us increase enrollment, and helped us with federal money. But that increased expenses, and now we are dependent on that money." To be sure, the medical schools were hardly innocent maidens seduced by high-rolling Uncle Sam. The medical schools wanted money and they courted the government aggressively and tenaciously. The resulting liaison was based on a mutual agreement in which both partners knew exactly what they were giving and what they could expect in return.

Though the medical schools always dreamed of a permanent marriage, the government was never willing to commit itself for more than a few years. When the government became disenchanted with the relationship and began to withdraw some of its funds, the medical schools reacted bitterly. At this stage of the affair, however, it no longer mattered who had initiated the romance. Uncle Sam—having implied true love, by sustaining the relationship for over a decade—looked like an ungrateful cad for even suggesting that he would no longer support the medical schools in the manner to which they had become accustomed.

The entitlement ethic

The benefits provided by a government program establish a set of dependencies. By creating new incentives and thus altering behavior, the government changes the financial environment of individuals and organizations. The beneficiaries become "dependent" upon the program and fear its termination. Canceling a program

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and its benefits causes genuine hardships among those grown accustomed to the new *status quo*.

If a relationship has existed for a long while, everyone comes to assume that it is a proper one. Even if no vows of fidelity are exchanged, the mere passage of years cements everyone's expectations and establishes a sense of legitimacy. The configuration of dependencies comes to look like a correct and just arrangement—the "natural" way of doing things. With respect to public policy, aversion to the termination of an existing relationship and its dependencies translates into an "entitlement ethic." *Once the government establishes a program, those who receive benefits from that program believe they are entitled to them.* A history of benefits provides *prima facie* evidence that the beneficiaries are worthy, it is thought, for after all, many years ago someone made a conscious decision—for what must have been good reasons—to provide the benefits, and no one has reversed that decision since. The entitlement ethic is not a conscious creed that prescribes personal or political conduct. No one ever advocates it as a positive principle: "Thou shalt continue the benefits of all government programs." To suggest that would be absurd. Rather, it applies in specific situations, as a narrow and negative constraint on political behavior: "Thou shalt not terminate the existing benefits received *by these people.*" Its political power becomes evident only when a particular program—and its beneficiaries—are threatened. But then it is always, if only subtly and indirectly, applicable.

Yet the entitlement ethic—because it appeals to our compassion—is highly effective. The question it raises is not whether some hypothetical program should be ended, but whether some specific, identifiable individuals should lose their benefits. It focuses on people and their losses. Regardless of the reasons for initiating the program or the legitimacy of the pressures used to maintain it, its termination would hurt people—and it is hard not to care about their plights.

The history of the capitation-grant program illustrates how a public program, and the dependencies it creates, can evolve so that termination seems not only difficult but unfair. The nation had a doctor shortage, and to eliminate it the government provided financial incentives to encourage the medical schools to increase enrollments. The medical schools welcomed the monies and achieved the desired public purpose. But the new, expanded scale of operations required new, expanded financing. The original income was no longer adequate, nor could the original sources be simply expanded proportionally to cover the expanded costs. The government pro-

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gram had not merely increased enrollments, it had changed the character of medical schools, the expectations of the medical students, and the environments in which they operated. How that happened—who supported and opposed the program, who had predicted, underrated, or ignored the change—was no longer relevant. *The dominant new factor was the government.* With the medical schools now dependent upon federal financing for their very existence, the capitation program would be difficult to end. To terminate it would seem unjust.

Political motivations

A fundamental reason why policy termination is so difficult is that the costs of any termination are obvious, concentrated, and large, while the benefits are obscure, diffuse, and small. For the capitation-grant program, the costs of termination would be borne by the medical schools, whose 114 deans knew exactly how much they stood to lose. By contrast, the beneficiaries of termination would be the general public. Yet with $100 million in annual expenditures for capitation, termination would reduce the federal income taxes paid by the average citizen by only 50¢. Even a taxpayer who knew about the program, understood the arguments against it, and believed that it should be eliminated, would have had little incentive to do anything. This large motivational bias toward continuation helps explain why federal programs are rarely terminated.

Besides motivation, political resources are also important, and the defenders of capitation possessed some important ones. Representative Paul G. Rogers, a friend of the medical schools, chaired the House subcommittee that handled all health legislation. The medical-school deans were important and influential citizens of their states and Congressional districts, and the Association of American Medical Colleges was an effective lobby. And in addition to its substantial support in Congress, the capitation program had some important advocates within the Department of Health, Education, and Welfare. Even so, a clever termination strategy—intelligently executed by a dedicated terminator—might have defeated competent defenders.

Termination does require a "terminator." Someone must build a political coalition that supports termination and must implement a termination strategy. For the capitation-grant program, the terminator was the Office of Management and Budget—or, more specifically, Victor M. Zafra, OMB's Health Branch Chief and some of his

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superiors, including Paul H. O'Neill, Deputy Director of OMB. Within HEW there were some terminators too, including Caspar W. Weinberger, who in January 1973 had left his post as Director of OMB to become Secretary of HEW. Said one high HEW official, "Weinberger would have loved to have had a program he put an end to."

The terminators at OMB were motivated primarily by economic concerns—by the budgetary savings they could obtain from terminating capitation. But such "economizers" are much less effective terminators than are "opponents" or "reformers." Opponents of a policy advocate termination because the policy is wrong or the government should not be engaged in this activity. Reformers advocate termination because the policy conflicts with their programmatic goals—because their new and better program cannot be implemented without first terminating the existing one.

A terminator, or a pro-termination coalition, can be motivated by any combination of these three rationales. For example, there was some of the "opponent" motivation at OMB, for many thought it wrong to use public funds to subsidize the education of very highly paid doctors. Moreover, many at OMB held that it was wrong to support schools, and much better to aid students. Similarly, there was some of the "reformer" motivation, for before capitation monies could be used to fund a new student-aid program, termination of the old program was necessary. But the terminators at OMB were primarily motivated by their responsibility as economizers; now that the doctor shortage had been eliminated, they sought to eliminate the unnecessary expense of capitation grants as well.

Opponents and reformers advocate termination because the program is bad. Economizers advocate termination "merely" to save money. But there are lots of ways to save money in government, and it is difficult to argue that terminating any single program is essential to preserving the integrity of the federal budget. For example, capitation expenditures were "only" $100 million per year—less than one percent of the *error* that OMB makes when it estimates annual federal expenditures. Within the Administration's annual budget review (and the Congress's annual appropriations deliberations) budgetary arguments can be very influential indeed. But the debate over capitation occurred outside the budgetary/appropriations process, and thus involved forums in which OMB's exclusively economic arguments were much less effective.

Certainly OMB could have designed a more effective termination strategy. There were a number of arguments that could have been

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used—if not against the capitation concept directly, then at least against the recipients of the capitation monies. Public attitudes toward the medical profession—and toward medical schools and students—might have made the capitation program vulnerable. Though public respect for physicians has traditionally been very high, the profession's reputation has declined in recent years as medical costs have grown substantially faster than the overall inflation rate. Certainly a clever terminator could have rallied some support with the populist argument that medical doctors, schools, and students had not behaved responsibly enough to warrant capitation support from the taxpayers.

Senator Dick Clark was one of the few to raise the equity question when he observed, "This massive subsidy of one of the most lucrative professions has been concealed from both the recipient and the donor by the institutional filters through which it flows." OMB did not use such arguments, partly because its economizer's motivation blinded it to their existence and effectiveness, and partly because its institutional ethos precluded such "blatantly political" thinking. OMB sees itself as the President's unbiased analyst. "We just make recommendations," explained Zafra, "I can't deal with the politics. . . . I don't feel competent to make political judgments."

A policy maker—the President or anyone else—often needs political judgments, however—recommendations that contain something more than a comparative analysis of the various policy alternatives with a star next to the best. *The policy maker also needs a recommendation of how to achieve that best policy.*

Zafra notes, "However it is decided, it won't be on the merits." If this is true, OMB has a clear responsibility to accompany its analyses of the merits of alternatives *with a proposed political strategy for enacting the most meritorious one.* Such political thinking would appear to be in violation of OMB's long tradition of "neutral competence." But a political analyst does not have to become a political activist. The President and the White House staff can perform that role. When the impartial analysts in OMB make a policy recommendation, however, that recommendation—if it is to have the best chance of being adopted *and* implemented successfully—should consist of an economic analysis of the best policy and a political analysis of the best way to achieve that policy.

OMB's failure to undertake a prescriptive political analysis left the agency vulnerable to the charge that its termination proposal was unfeasible. A clear, well-designed termination strategy is necessary to combat the argument that continuation is inevitable—the

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argument that HEW used to convince President Ford to reject termination. "Congress is not going to end capitation," went HEW's reasoning, "and to hold out for complete termination ensures that we will have no influence upon the type of bill that Congress eventually passes." Explained one HEW staffer, "Most important, capitation was politically inevitable. If capitation was inevitable and we opposed it, we'd be out of the ball game."

In fact, during 1974 and the first part of 1975 the Administration was out of the Congressional ball game. In the summer of 1975, however, an important administrative change occurred. Weinberger resigned as Secretary of HEW, and President Ford replaced him with F. David Mathews, who took a leave-of-absence from the presidency of the University of Alabama, which had a medical school. A cabinet secretary will take an issue to the President personally perhaps a dozen times a year. The first question that Mathews decided to appeal directly to President Ford was the Administration's position on capitation grants.

Toward the end of the summer, Dr. Theodore Cooper, HEW's Assistant Secretary for Health, and William A. Morrill, Assistant Secretary for Planning and Evaluation, drafted a memo for Mathews to send to Ford. The document—"the winning document" Morrill calls it—emphasized the we-have-to-play-ball theme.

> If we persist in the OMB position, the Administration will play no role in the Congressional outcome which the Department assesses to be either extension of existing law or a variant of one of the Congressionally-drafted bills . . . It is quite clear that Congress will continue capitation. Our recommended approach takes that fact and . . . gives you the opportunity for a positive and needed initiative in the health field within the framework of the budget you have approved. Without it, Congress will go its own way, leaving us in a negative posture. . . .

In September—the night before Cooper was scheduled to testify on capitation before Senator Edward M. Kennedy's health subcommittee—the President decided for HEW and continuation. Senator Kennedy was delighted—"ecstatic" said one HEW staffer. Indeed, Kennedy made the Ford Administration's (i.e., HEW's) proposed legislation the basis of the bill reported out of his subcommittee.

In the struggle between HEW and OMB for the mind of the President, HEW won for several reasons. For one, the question was not decided through the annual budget-preparation channels where OMB had its most influence. Moreover, as OMB's Zafra notes, HEW cared much more about this issue than did OMB, and thus had the

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motivation to fight harder. Finally, OMB lost because it was unable to counter HEW's most potent argument, that continuation was inevitable. Why should the President place even a small amount of his valuable political prestige behind a proposal that is doomed to failure?

At the White House meeting during which President Ford decided for HEW and against OMB, no one presented a political strategy for achieving termination. As a result, the political opportunity costs dominated everyone's thinking. "To adopt a go-for-broke [i.e., termination] strategy, the President would have had to take on not only the medical schools, but the whole medical profession," explained OMB's O'Neill, who attended the meeting. The termination proposal was quite consistent with the general policy themes of the Nixon and Ford Administrations, emphasized O'Neill, but everyone recognized that "this would cost on other issues, even on something like the SALT treaty." It would cost the President less to attempt, sometime in the future, to phase down appropriations for capitation than to terminate its authorization.

Was the continuation of capitation really inevitable? Certainly, without an intelligent political strategy for termination it was. OMB, by failing to develop a plan for building a pro-termination coalition and for overcoming the well-known tactics of program survival, helped make the continuation of capitation "inevitable."

The maldistribution problem

Terminators and defenders were not the only political players struggling over the future of the capitation-grant program. Also involved was a group of policy "activists" who were concerned about an entirely different set of problems: the maldistribution of physicians by specialty and geography. These activists saw the capitation-grant program as an available lever with which to influence this new problem, and thus sought to adapt the existing program to their purposes.

Though by the mid-1970's the doctor shortage had disappeared, not everyone had adequate medical care. Too many doctors were of the wrong type, the activist insisted, and too many were in the wrong place. The nation had an oversupply of surgeons and an undersupply of general practitioners. The suburbs and the areas around the major medical centers had more than enough physicians, while the rural and inner-city areas lacked basic medical services.

Defining which doctors are providing primary medical care is

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somewhat arbitrary (general practitioners, internists, pediatricians, and obstetrician-gynecologists are included in various counts), but the trend was unmistakable. In 1931, there were 150,000 physicians in the U.S. of which 124,000 physicians (or 82 percent) provided primary care; in 1973, there were 270,000 physicians but only 75,000 (or 28 percent) were in the primary-care fields. Moreover, since the country's population was increasing, the number of primary-care physicians per 100,000 population dropped from 99 in 1931 to 36 in 1973. Medical students simply found it more attractive to enter one of the specialties such as surgery, psychiatry, radiology, or neurology—or even one of the sub-specialties of internal medicine, such as cardiology—than to become general practitioners or enter the new "specialty" of family medicine. While the renewal of capitation was being debated, a consensus developed that the ratio of primary-care physicians to all other physicians (and the ratio of primary-care residencies to all other residencies) should be one-to-one. Yet not even increasing the percentage of primary-care residencies would immediately solve the specialty-maldistribution problem. The "pipeline" of medical education is quite long—seven or eight years—and changes in educational patterns will only affect the availability of medical services in the very long run.

The maldistribution problem concerned not only the specialties but the geographic location of doctors as well. The rural and inner-city areas did not have an adequate supply of physician services—principally primary-care services. In 1976, the Commission on Physicians for the Future (sponsored by the Josiah Macy, Jr. Foundation) reported that the ratio of physicians to 100,000 population varied from 234 in New York State to 82 in Mississippi and 79 in South Dakota. The commission further observed, "there are some 120 rural counties that are without a physician. In the cities, too, many people find that private physicians are not available."

The problems of specialty and geographic maldistribution had not gone unrecognized during the 1960's. Indeed, they helped motivate the health-manpower legislation that was designed to train more doctors. If the total supply of doctors could be increased, it was thought, no one need be without adequate, primary medical care. By the mid-1970's, however, this trickle-down theory was discredited, as new physicians continued to avoid the underserved areas and the primary-care fields.

Policy activists perceived a need for federal action. But it was not clear what the government could do. There was no dearth of proposals for what policy levers the federal government should pull;

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the question was whether any of them would have any effect. In the 1960's, the nation's health-manpower objective—to eliminate the doctor shortage—could be attacked directly: All the government needed to do was to pay the medical schools to train more doctors. By contrast, the 1970's policy problems—altering the distribution of physicians by specialty and geography—were much more complicated. The policy levers that were available were linked only indirectly to the causes of the problems.

The decisions of young physicians about which specialty field to enter are influenced by three general factors: personal attitudes shaped by past experiences, including those in medical school; immediate opportunities to pursue residency training in the various specialties; and the career characteristics of each specialty—including professional challenge, prestige, working conditions, and income. How could the government influence these three factors so as to alter the specialty choices of young physicians?

The third factor, career characteristics, is quite elusive. What exactly are these characteristics, how important are they, and how can they be changed? The type of system that the nation employs to provide health-care services does affect the attractiveness of various specialties. But the link is indirect, and thus so is the connection between the nature of the health-care system and specialty maldistribution. Consequently, the major proposals to reduce specialty maldistribution involved creating policy levers to affect the other two factors: the educational environment of medical schools, and the availability of residency positions.

The influence of the medical schools on the career choices of their students received substantial attention in the Congressional deliberations. The specialty preferences of future doctors, many argued, are decisively shaped by the problems emphasized in medical schools, by the educational experiences provided there, and by the role models on the faculty. Thus one suggestion was to require medical schools to provide various kinds of primary-care training and experiences. Yet the effect of any such policy on the specialty choices of doctors would be highly uncertain.

The availability of residency positions provides a more direct link. Upon graduation from medical school, the new M.D. selects the type of residency in which to pursue post-graduate training. Consequently, the specialty maldistribution of practicing physicians is directly linked to the specialty maldistribution of the available residencies. Thus the policy debate focused on what levers—if any—the government should pull to change the number of residencies in each

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specialty. What carrots and/or sticks should the government employ? There were four basic approaches: voluntarism (neither a carrot nor a stick); paying the salaries of residents (a carrot); taking over the accreditation of residency programs (a stick); or, adding new conditions to capitation funds (tying an old carrot to a new stick).

Voluntarism, most predicted, would have little effect. Although the residency programs are "educational," the "students" are paid a salary by the hospital in which they do their residency. Salaries come from the hospital's income for health-care services, and since most of these payments come from third-party insurers who provide little coverage for primary and ambulatory care, a hospital has little incentive to offer residency training in such fields. Thus some advocated the second alternative, federal support for new primary-care residency programs. Dr. John P. Bunker of the Stanford University Medical School argued for "separation of teaching priorities from the needs of hospital service," and declared that "only when the public pays for medical education can it expect to have a voice in what kinds of physicians are trained and where they practice."

Of course, there was not only the carrot of federal money to affect the distribution of residency positions, there was also the stick of federal regulation. Senator Kennedy proposed, for example, that the Secretary of Health, Education, and Welfare determine the number of each type of residency position to be available each year, and in 1974 the Labor and Public Welfare Committee, on which Kennedy sat, approved a bill containing such a provision. In the House, Representative Rogers also favored a regulatory approach, though he proposed having an organization of the medical profession—not the government—allocate the residency positions.

The medical schools—and others—thought such regulatory mechanisms too extreme. For this reason, Senator J. Glenn Beall, Jr., a Republican member of Senator Kennedy's subcommittee, offered his own stick, based on the old carrot of the capitation grant. Beall proposed that a medical school be eligible to receive capitation funds only if it administered a three-year residency program in family medicine, and by fiscal year 1977 either had 20 percent of its residency positions in family medicine, or 45 percent in the primary-care specialties. When Senator Kennedy's bill reached the floor in September 1974, Senator Beall's substitute was adopted 70-18.

When, upon completing residency training, a young doctor decides where to set up his practice, three basic characteristics of the possible locations appear to be important: potential income, social

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and cultural "life style," and professional modes of operation. Of these three factors, the federal government can influence directly only income (though it could affect professional modes indirectly through a massive redistribution of all types of medical services). But income appears to be the least influential factor.

More significant is the preference of most doctors—and their families—for suburban living. In addition, rural practice appears professionally unattractive to most physicians. As medical students and residents, they had access to sophisticated equipment and the advice of highly-trained specialists. Working in a rural community, however, they are on their own. Their workload is heavier and they have little time or opportunity to consult colleagues about complex problems or to employ special equipment or tests. (Some doctors do choose to practice in rural areas; mostly, however, they are returning to communities like those in which they grew up.)

How then could the federal government influence the geographic decisions of doctors? Again, there were numerous proposals: Recruit medical students from rural areas; expose medical students to rural practice; provide financial aid conditioned upon a few years of service in specified areas; provide bonuses—such as medical facilities, housing, and automobiles—for doctors who practice in a rural community; conscript physicians to serve in underserved regions. And again, the linkages and prospects for success were highly uncertain. Consequently, much of the debate concerned how to obligate medical graduates to spend at least a few years practicing in underserved areas. Though this approach would have only a transitory impact—since once most doctors completed their service obligation, they would set up permanent practice in the traditional, overserved areas—this was the most direct lever available, and thus the most attractive.

The effectiveness of this approach was dependent upon how costly it was for the former students to pay off their obligation with money rather than service. Since 1965 medical students have been able to repay their federal loans by practicing in areas designated by the Secretary of HEW as underserved, but the General Accounting Office reported in 1974 that of the approximately 31,000 graduates who had received federal loans, only 219 physicians and dentists had paid back even a portion of their loan with service. And 167 of them told the GAO that they would have selected the same area anyway! Thus, the loan "forgiveness" provision influenced the temporary geographic selection of only 82 medical- and dental-school graduates. (More effective was the National Health Service Corps

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—NHSC—scholarship program, which provided a year of scholarship for a year of practice in a shortage area.)

The three major plans to reduce geographic maldistribution linked service requirements to the capitation-grant program. Representative Rogers proposed that each student repay the federal government for the amount of capitation his school received because of his attendance with money or service in a certified shortage area. Senator Kennedy proposed to condition capitation support on the medical school's obtaining a signed agreement with *every* student to practice in an underserved area. Senator Beall's condition was that the school obtain such an agreement from 25 percent of its students. Kennedy's proposal—called a "doctor draft" by its opponents—was incorporated into the bill reported to the full Senate by the Labor and Public Welfare Committee, but Beall's provision was adopted as a substitute on the floor. Rogers' proposal was incorporated into the bill as reported by his committee and adopted by the House.

Capitation grants and "inevitability"

When the Ford Administration shifted from advocating termination of capitation grants to favoring a modification of the program, it adopted Senator Beall's proposals on specialty and geographic maldistribution. These were incorporated into the bill that the Senate adopted in July 1976. The bill passed by the House reflected Representative Rogers' thinking on the geographic problem, though the House deleted Rogers' proposals to alleviate the specialty problem. The final legislation produced by the conference committee, however, was substantially weaker than either the Senate or House bills.

The only provision in the 1976 legislation to influence geographic distribution was increased support for NHSC scholarships—with a triple-pay-back requirement added for students who reneged on their service obligations—and funding for these scholarships was tied to the capitation-grant program. To ensure that appropriations did not favor capitation over NHSC scholarships, the authorizing legislation provided that if 75 percent or more of the funds authorized for capitation were appropriated, NHSC scholarship appropriations would have to be either the amount authorized or 50 percent of the funds appropriated under the entire act. Thus, in the final legislation the attempt to alleviate geographic maldistribution was linked indirectly to capitation. In effect, the conferees relied

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upon the capitation lever and the lobbying prowess of the AAMC to ensure that the NHSC scholarship program would be adequately funded. Rather than imposing conditions on individual students or schools using capitation funds, the conferees imposed conditions on all the schools' collective access to capitation support.

In their efforts to attack the specialty-maldistribution problem, the conferees did not require as a condition for capitation grants that a medical school have a certain percentage of its affiliated residency positions in the primary-care fields. Rather, the final legislation set annual, national targets for primary-care residencies (35 percent for 1977, 40 percent for 1978, and 50 percent for 1979), which if not met in any given year would mean the following year's percentage would apply to each school individually as a condition for capitation support.[2]

There are three reasons why it was almost inevitable that the capitation-grant program would become the lever that Congress would use to attack maldistribution. First—and perhaps most important—capitation was simply the most available. Second, it was a lever that arguably could effect the desired change. Third, using capitation grants to extract a *quid pro quo* from the medical schools had precedents and appeared to many people to be quite reasonable. To a Congress wishing to attack the maldistribution problem, capitation grants were the most logical tool. No one knew which of all the available governmental levers would work best. But everyone knew that the capitation lever was available, and that was its advantage.

Of course, it could be argued that nobody ought to be pulling any levers. Dr. William A. Sodeman, a past chairman of the AMA's Council on Medical Education, expressed this view to Representative Rogers' subcommittee in 1974: "Advocates of such controls [on specialty distribution] ignore the principle that an individual in our free society has the right of free choice concerning his career." Yet the individual medical student's "right of free choice concerning his career" is not really free: The government is paying for part of it.

[2] Incredibly, the conferees also adopted a provision that appeared in neither of the bills passed by the House or Senate. Known as the "Guadalajara clause," it required medical schools receiving capitation funds to accept as third-year medical students a number of U.S. citizens who had spent two years studying at foreign medical schools (such as the one in Guadalajara, Mexico). Again, the capitation-grant program provided a convenient lever with which to ensure that students who could not gain admission to a U.S. medical school, yet were wealthy enough to spend two years studying abroad, could obtain a U.S. medical degree. The public purpose of this provision was not very clear, however, and the medical schools were able to have the provision repealed in the name of "academic freedom."

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And given the government's investment in the student's career, it is quite predictable—if not always desirable—that the government will attempt to influence, if not control, that career. If the government pays for the "lunch," it is not completely free—even to the individual. Initially it may be, but eventually the government will start imposing conditions upon those who want to eat—if only to require them, as the skid-row missions do, to sit through a sermon before they can have their "free" meal.

That is what happened to medical education and the "free choice" of a medical career. At first, the choice was indeed "free," at least to the school and the student (though not to the taxpayer and the health-care patient). But eventually the government began to require some tribute in return. If the government was going to pay to sustain the medical schools and educate students, it was also going to extract some conditions.

There was a certain poetic justice in using capitation to coerce medical schools. In 1971, Dr. William G. Anlyan, chairman of the AAMC's Executive Council, told Kennedy's Senate subcommittee that the annual cost of educating a medical student was $15,000 to $25,000, and then continued:

> The key question is how much of a national resource are the medical schools? Are they at least a third to a fifth of a national resource, and if so, then the $5,000 per student per year [for capitation] seems like an absolute, rock-bottom minimum for federal support.

Yet if the medical schools are so much of a national resource that they deserve federal money, are they not also a national resource that requires federal oversight? If the medical schools are a third to a fifth of a national resource, maybe the federal government ought to pay a third to a fifth of their costs, but then maybe too it ought to have a third to a fifth of a say in how they are run. Indeed, the House Committee made this very argument when it reported its bill to the full House in 1974:

> The committee believes that federal support on such a substantial level should only be extended to those schools which agree to fulfill nationally perceived needs . . . The twin problems of over-all shortages and geographic maldistribution of health personnel . . . cannot be solved by providing hundreds of millions of dollars to health-profession schools without exacting some measure of compliance with their oft-voiced claim to being national resources.

As one journalist wrote, "Medical schools, those invaluable institutions, may be becoming in effect a public utility."

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The modification bias

Why was the capitation-grant program modified rather than terminated? Dr. Thomas Kennedy of the AAMC says: "There are some strong members of Congress who want to shape policy with respect to health care and health manpower. They've been looking for a politically acceptable handle to do that." To the policy activist, the capitation-grant program was that "politically acceptable handle."

Moreover, activists seeking to modify old programs for new purposes claim a certain moral superiority for their causes. Identifying and attacking new public problems seems politically more worthwhile than terminating programs that have outlived their usefulness. Terminators, as Secretary Mathews wrote in his memo to President Ford, have a "negative posture" while activists recommend a "positive initiative."

Indeed, modification may be the more likely outcome even when most of the policy players prefer a combination of termination-plus-initiation to modification. In the case of the capitation-grant program, many of the policy activists and the terminators would have preferred ending capitation, permitting medical-school tuitions to rise, and then using federal funds to provide direct student aid conditioned on several years of service in shortage areas. But this would have been a more difficult policy to enact. Defenders would more oppose termination-plus-initiation than they would modification. Further, a termination-plus-initiation strategy, because it involves two steps, could be upset before the replacement policy was implemented.

Finally, there is the self-fulfilling prophecy that termination is impossible. Termination is rarely tried because it is difficult; termination appears all the more difficult because it is rarely tried. The economizing terminators at OMB had a difficult time arguing that the Administration ought to push termination when everyone "knew" it was impossible. And the termination-plus-initiation strategy was never given much attention by the policy activists in Congress or HEW because it appeared so difficult. With termination seemingly impossible, modification was the preferred alternative.

Aaron Wildavsky has written, "The danger of claiming superb accomplishments is that Congress and the Budget Bureau may reward the agency by ending the program." As it turns out, there is little real danger of that.

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The two faces of unionism

RICHARD B. FREEMAN & JAMES L. MEDOFF

TRADE unions are the principal institution of workers in modern capitalist societies, as endemic as large firms, oligopolistic organization of industries, and governmental regulation of free enterprise. But for over 200 years, since the days of Adam Smith, there has been widespread disagreement about the effects of unions on the economy. On the one side, such economists as John Stuart Mill, Alfred Marshall, and Richard Ely (one of the founders of the American Economic Association) viewed unions as having major positive effects on the economy. On the other side, such economists as Henry Simons and Fritz Machlup have stressed the adverse effects of unions on productivity. In the 1930's and 1940's, unions were at the center of attention among intellectuals, with most social scientists viewing them as an important positive force in society. In recent years, unionism has become a more peripheral topic and unions have come to be viewed less positively. Less and less space in social-science journals and in magazines and newspapers is devoted to unions. For example, the percentage of articles in major economics journals treating trade unionism dropped from 9.2 percent in the 1940's to 5.1 percent in the 1950's to 0.4 percent in the early 1970's. And what is written is increasingly unfavorable. The press often paints unions as organiza-

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tions which are socially unresponsive, elitist, nondemocratic, or ridden with crime. In the 1950's, 34 percent of the space devoted to unions in *Newsweek* and *Time* was unfavorable; that has risen to 51 percent in the 1970's. Economists today generally treat unions as monopolies whose sole function is to raise wages. Since monopolistic wage increases are socially deleterious—in that they can be expected to induce both inefficiency and inequality—most economic studies implicitly or explicitly judge unions as having a negative impact on the economy.

Our research demonstrates that this view of unions as organizations whose chief function is to raise wages is seriously misleading. For in addition to raising wages, unions have significant non-wage effects which influence diverse aspects of modern industrial life. By providing workers with a voice both at the workplace and in the political arena, unions can and do affect positively the functioning of the economic and social systems. Although our research on the non-wage effects of trade unions is by no means complete and some results will surely change as more evidence becomes available, enough work has been done to yield the broad outlines of a new view of unionism.

Unions as collective voice

One key dimension of the new work on trade unionism can best be understood by recognizing that societies have two basic mechanisms for dealing with divergences between desired social conditions and actual conditions. The first is the classic market mechanism of exit and entry, individual mobility: The dissatisfied consumer switches products; the diner whose soup is too salty seeks another restaurant; the unhappy couple divorces. In the labor market, exit is synonymous with quitting, while entry consists of new hires by the firm. By leaving less-desirable jobs for more-desirable jobs, or by refusing bad jobs, individuals penalize the bad employer and reward the good—leading to an overall improvement in the efficiency of the social system. The basic theorem of neoclassical economics is that, under well-specified conditions, the exit and entry of persons (the hallmark of free enterprise) produces a "Pareto-optimum" situation—one in which no individual can be made better off without making someone worse off. Economic analysis can be viewed as a detailed study of the implications of this kind of adjustment and of the extent to which it works out in real economies. As long as the exit-entry market mechanism is viewed as the only efficient adjust-

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ment mechanism, institutions such as unions must necessarily be viewed as impediments to the optimal operation of a capitalist economy.

There is, however, a second mode of adjustment. This is the political mechanism, which Albert Hirschman termed "voice" in his important book, *Exit, Voice, and Loyalty*. "Voice" refers to the use of direct communication to bring actual and desired conditions closer together. It means talking about problems: complaining to the store about a poor product rather than taking business elsewhere; telling the chef that the soup had too much salt; discussing marital problems rather than going directly to the divorce court. In a political context, "voice" refers to participation in the democratic process, through voting, discussion, bargaining, and the like.

The distinction between the two mechanisms is best illustrated by a specific situation—for instance, concern about school quality in a given locality. The exit solution to poor schools would be to move to a different community or to enroll one's children in a private school, thereby "taking one's business elsewhere." The voice solution would involve political action to improve the school system, through school-board elections, Parent Teacher Association meetings, and other direct activities.

In the job market, voice consists of discussing with an employer conditions that ought to be changed, rather than quitting the job. In modern industrial economies, and particularly in large enterprises, a trade union is the vehicle for collective voice—that is, for providing workers as a group with a means of communicating with management.

Collective rather than individual bargaining with an employer is necessary for effective voice at the workplace for two reasons. First, many important aspects of an industrial setting are "public goods," which affect the well-being (negatively or positively) of every employee. As a result, the incentive for any single person to express his preferences, and invest time and money to change conditions (for the good of all), is reduced. Safety conditions, lighting, heating, the speed of a production line, the firm's policies on layoffs, work-sharing, cyclical-wage adjustment, and promotion, its formal grievance procedure and pension plan—all obviously affect the entire workforce in the same way that defense, sanitation, and fire protection affect the entire citizenry. "Externalities" (things done by one individual or firm that also affect the well-being of another, but for which the individual or firm is not compensated or penalized) and "public goods" at the workplace require collective deci-

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sion-making. Without a collective organization, the incentive for the individual to take into account the effects of his or her actions on others, or express his or her preferences, or invest time and money in changing conditions, is likely to be too small to spur action. Why not "let Harry do it" and enjoy the benefits at no cost? This classic "free-rider" probem lies at the heart of the so-called "union-security" versus "right-to-work" debate.

A second reason collective action is necessary is that workers who are not prepared to exit will be unlikely to reveal their true preferences to their bosses, for fear of some sort of punishment. The essence of the employment relationship under capitalism—as Karl Marx, Ronald Coase, Herbert Simon, and numerous other analysts have recognized—is the exchange of money between employer and employee in return for the employer's control over a certain amount of the worker's time. The employer seeks to use his employee's time in a way that maximizes the value of the output the employee produces. Even in the case of piece rates, employers monitor employee activity to assure the quality of output. As a result, the way in which the time purchased is utilized must be determined by some interaction between workers and their boss. Since the employer can fire a protester, individual protest is dangerous; so a prerequisite for workers' having effective voice in the employment relationship is the protection of activists from being discharged. In the United States this protection is granted in a section of the National Labor Relations Act which states: "It shall be an unfair labor practice for an employer by discrimination in regard to hire or tenure or employment or any term or condition of employment to encourage or discourage membership in any labor organization." Indeed, court interpretation of U.S. labor law makes a sharp distinction between collective and individual actions at the workplace: Workers acting collectively are protected from managerial retaliation, but an individual acting alone is not.

The collective nature of trade unionism fundamentally alters the operation of a labor market and, hence, the nature of the labor contract. In a nonunion setting, where exit and entry are the predominant forms of adjustment, the signals and incentives to firms depend on the preferences of the "marginal" worker, the one who will leave (or be attracted) by particular conditions or changes in conditions. The firm responds primarily to the needs of this marginal, generally younger and more mobile worker and can within some bounds ignore the preferences of "infra-marginal," typically older workers, who—for reasons of skill, knowledge, rights that can-

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not be readily transferred to other enterprises, as well as because of other costs associated with changing firms—are effectively immobile. In a unionized setting, by contrast, the union takes account of the preferences of *all* workers to form an average preference that typically determines its position at the bargaining table. Because unions are political institutions with elected leaders, they are likely to be responsive to a different set of preferences from those that dominate in a competitive labor market.

In a modern economy, where workers tend to be attached to firms for eight or more years, and where younger and older workers are likely to have different preferences (for instance, regarding pension or health-insurance plans versus take-home pay, or layoffs by inverse seniority versus work-sharing or cuts in wage growth), the change from a marginal to an average calculus is likely to lead to a very different labor contract. When issues involve sizeable fixed costs or "public goods," a calculus based on the average preference can lead to a contract which, ignoring distributional effects, is socially more desirable than one based on the marginal preference—that is, it may even be economically more "efficient."

As a voice institution, unions also fundamentally alter the social relations of the workplace. Perhaps most importantly, a union constitutes a source of worker power in a firm, diluting managerial authority and offering members a measure of due process, in particular through the union innovation of a grievance and arbitration system. While 99 percent of major U.S. collective-bargaining contracts provide for the filing of grievances, and 95 percent provide for arbitration of disputes that are not settled between the parties, relatively few nonunion firms have comparable procedures for settling disagreements between workers and supervisors. More broadly, the entire industrial jurisprudence system—by which many workplace decisions are based on negotiated rules (such as seniority) instead of supervisory judgment (or whim), and are subject to challenge through the grievance/arbitration procedure—represents a major change in the power relations within firms. As a result, in unionized firms workers are more willing and able to express discontent and to object to managerial decisions.

Thus, as a collective alternative to individualistic actions in the market, unions are much more than simple monopolies that raise wages and restrict the competitive adjustment process. Given imperfect information and the existence of public goods in industrial settings, and conflicting interests in the workplace and in the political arena, unionism provides an alternative mechanism for bringing

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about change. This is not to deny that unions have monopolistic power nor that they use this power to raise wages for a select part of the workforce. The point is that unionism has two "faces," each of which leads to a different view of the institution: One, which is at the fore in economic analysis, is that of a monopoly; the other is that of "a voice institution," i.e., a socio-political institution. To understand fully what unions do in modern industrial economies, it is necessary to examine both faces.

The response to unions

Another crucial point about unions is that their effects will depend upon the response of management. This was stressed by Sumner H. Slichter, James J. Healy, and E. Robert Livernash in their classic volume, *The Impact of Collective Bargaining on Management.* If management uses the collective-bargaining process to learn about and improve the operation of the workplace and the production process, unionism can be a significant plus that improves managerial efficiency. On the other hand, if management reacts negatively to collective bargaining or is prevented by unions from reorganizing the work process, unionism can have a negative effect on the performance of the firm. The important point is that just as there are two sides to the market, demand and supply, there are two forces determining the economic effects of collective bargaining, managements and unions. The economic impact of bargaining and the nature of industrial relations depend on the policies and actions of both. It is for this reason that we use the two terms "collective voice" and "institutional response" to refer to the second view of unionism under consideration.

The monopoly and collective-voice/institutional-response views of the impact of unionism are strikingly different, as the table on page 75 demonstrates. While no sophisticated adherent of the monopoly model would deny the voice aspects of unionism, and no industrial-relations expert would gainsay the monopoly effects, the polar dichotomization usefully highlights the facets of unionism stressed by the two views. The monopoly and collective-voice/institutional-response views of unionism in many instances give completely opposite pictures of the institution. According to the former, unions are by nearly all criteria undesirable impediments to the social good; in the latter view, unions have many valuable features that contribute to the functioning of the economy. In the monopoly view, the current dwindling in the percentage of private-

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TABLE I. *Two Views of Trade Unionism**

	UNION EFFECTS ON ECONOMIC EFFICIENCY	UNION EFFECTS ON DISTRIBUTION OF INCOME	SOCIAL NATURE OF UNION ORGANIZATION
Monopoly View	Unions raise wages above competitive levels, which leads to too little labor relative to capital in unionized firms. Union work rules decrease productivity. Unions lower society's output through frequent strikes.	Unions increase income inequality by raising the wages of highly skilled workers. Unions create horizontal inequities by creating differentials among comparable workers.	Unions discriminate in rationing positions. Unions (individually or collectively) fight for their own interests in the political arena. Union monopoly power breeds corrupt and nondemocratic elements.
Collective-Voice/ Institutional-Response View	Unions have some positive effects on productivity—by reducing quit rates, by inducing management to alter methods of production and adopt more efficient policies, and by improving morale and cooperation among workers. Unions collect information about the preferences of all workers, which leads the firm to choose a "better" mix of employee compensation and a "better" set of personnel policies. Unions improve the communication between workers and management, leading to better decision-making.	Unions' standard-rate policies reduce inequality among organized workers in a given company or a given industry. Union rules limit the scope for arbitrary actions concerning the promotion, layoff, recall, etc., of individuals. *Unionism* fundamentally alters the distribution of power between marginal (typically junior) and inframarginal (generally senior) employees, causing union firms to select different compensation packages and personnel practices than nonunion firms.	Unions are political institutions that represent the will of their members. Unions represent the political interests of lower-income and disadvantaged persons.

* Source: The authors.

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sector wage and salary workers who are unionized (from 37 percent in 1958 to 29 percent in 1974) is a desirable development and should be associated with increased productivity and reduced inequality—and thus ought perhaps to be encouraged. From the collective-voice/institutional-response point of view, the dwindling of private-sector unionization has serious negative economic and social consequences and should be an issue of public concern.

Since, in fact, unions have both monopoly and collective-voice/institutional-response components, the key question for understanding unionism in the United States relates to the relative importance of these two faces. Are unions primarily monopolistic institutions, or are they primarily voice institutions that induce socially beneficial responses? What emphasis should be given to these two extreme views for one to obtain a realistic picture of the role trade unionism plays in the United States?

To answer these important questions, we have studied a wide variety of data that distinguish between union and nonunion establishments and between union and nonunion workers, and we have interviewed representatives of management, labor officials, and industrial-relations experts. Although additional work will certainly alter some of the specifics, our research has yielded several important results which suggest that unions do a great deal more than win monopoly wage gains for their members.

Effects on efficiency

In the monopoly view, unions reduce society's output in three ways. First, union-won wage increases cause a misallocation of resources by inducing organized firms to hire fewer workers, to use more capital per worker, and to hire higher quality workers than is socially efficient. Second, union contract provisions—such as limits on the loads that can be handled by workers, restrictions on tasks performed, featherbedding, and so forth—reduce the output that should be forthcoming from a given amount of capital and labor. Third, strikes called to force management to accept union demands cause a substantial reduction in gross national product.

By contrast, the collective-voice/institutional-response model directs attention to the important ways in which unionism can raise productivity. First of all, unionism should reduce "quits." As workers' voice increases in an establishment, less reliance need be placed on the exit and entry mechanism to obtain desired working conditions. Since hiring and training costs are lowered and the func-

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tioning of work groups is less disrupted when "quit" rates are low, unionism can actually raise efficiency.

The fact that senior workers are likely to be relatively more powerful in enterprises where decisions are based on voice instead of exit and entry points to another way in which unions can raise productivity. Under unionism, promotions and other rewards tend to be less dependent in any precise way on individual performance and more dependent on seniority. As a result, in union plants feelings of rivalry among individuals are likely to be less pronounced than in nonunion plants and the amount of informal training and assistance that workers are willing to provide one another is greater. (The importance of seniority in firms in Japan, together with the permanent employment guaranteed many workers there, have often been cited as factors increasing the productivity of Japanese enterprises.) It is, of course, also important to recognize that seniority can reduce productivity by placing individuals in jobs for which they are not qualified.

Unionism can also raise efficiency by pressuring management into tightening job-production standards and accountability, in an effort to respond to union demands while maintaining profits. Slichter, Healy, and Livernash wrote in 1960, "The challenge that unions presented to management has, if viewed broadly, created superior and better-balanced management, even though some exceptions must be recognized." Their conclusion means that with a unionized workforce management is able to extract more output from a given amount of inputs than is management that is not confronted with a union. This appears to occur largely because modern personnel practices are forced on the firm and traditional paternalism is discarded. Management's ability to make such improvements is a function of the union's cooperation, since the union can perform a helpful role in explaining changes in the day-to-day routine. One recent study supportive of this view reports that while union workers spend more time on formal breaks, they spend *less* time on informal ones and report working harder than nonunion workers.[1]

Finally, under the voice view, the collective bargaining appara-

[1] It is important to recognize that productivity gains, from improved methods of management in the face of unionism, run counter to the standard assumption of neoclassical economics that all enterprises operate at peak efficiency. It is, however, consistent with the "satisficing" models of firms developed by the recent Nobel Prize winner Herbert Simon and other analysts and with the model of X-inefficiency put forth by Harvey Leibenstein. In these models, firms strive for maximum efficiency only when they are under severe pressure from competitors, unions, or other external forces.

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tus opens an important communication channel between workers and management, one likely to increase the flow of information between the two, and possibly improve the productivity of the enterprise. As Lloyd G. Reynolds has observed, "Unions can do valuable work by pointing out improvements that perhaps should have been obvious to management but were not, and that, once discovered, can be installed with a net gain to the company as well as the workers."

What does the evidence reveal on these points? Most of the econometric analysis of unions has focused on the question of central concern to the monopoly view: How large is the union wage effect? In his important book, *Unionism and Relative Wages,* H. Gregg Lewis summarized results of this analysis through the early 1960's, concluding that, while differing over time and across settings, the union wage effect averages on the order of 10 to 15 percent. That is, as a result of collective bargaining, a union member makes about 10 to 15 percent more than an otherwise comparable worker who is not a member. Later work, using larger data files which have information permitting more extensive controls and employing more complex statistical techniques, tends to confirm Lewis's generalization. While unions in some environments raise wages by an enormous amount, the average estimated union wage effect is by no means overwhelming.

As predicted by the monopoly wage model, the capital-labor ratio and average "quality" of labor both appear to be somewhat greater than "optimal" in union settings. However, the total loss in output due to this misallocation of resources appears to be miniscule; an analysis done by Albert Rees suggests that the loss is less than 0.3 percent of the gross national product. For 1975, that would have amounted to $21.00 per person in the U.S. Even this estimate may be too high if one considers the other important and relevant distortions in the economy.

The evidence on quits and productivity

One of the central tenets of the collective-voice/institutional-response model is that among workers receiving the same pay, unions reduce employee turnover and its associated costs by offering "voice" as an alternative to exit. Our own research, using newly available information on the job changes and employment status of thousands of individuals and industry-level turnover rates, shows that, with diverse factors (including wages) held constant, unionized workers do have significantly lower quit rates than nonunion

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workers who are comparable in other respects. As Table II shows, the differences between organized and unorganized workers are very large. Moreover, consistent with the claim that unions provide better representation for workers with greater seniority, the evidence suggests a larger reduction in exit and a larger increase in job tenure for older male workers than for younger male workers.

TABLE II. *Estimates of the Effect of Unionism on Quits and Tenure with Firm**

SAMPLE	APPROXIMATE PERCENTAGE AMOUNT BY WHICH QUITS ARE REDUCED BY UNIONISM (WITH WAGES FIXED)	APPROXIMATE PERCENTAGE AMOUNT BY WHICH TENURE IS INCREASED BY UNIONISM (WITH WAGES FIXED)
All workers (Michigan Panel Study of Income Dynamics)	45%	36%
All workers (May Current Population Surveys, 1973-75)	86	–
Male workers (National Longitudinal Survey)		
Older men (48-62 in 1969)	107	38
Younger men (17-27 in 1969)	11	15
Manufacturing workers (Industry-level Turnover Rates from Bureau of Labor Statistics)	34 to 48	–

* Source: Figures are based on multivariate regression analyses reported in R. B. Freeman, "The Exit-Voice Tradeoff in the Labor Market: Unionism, Job Tenure, Quits, and Separations," *Quarterly Journal of Economics*, forthcoming, and in "Why Do Unions Increase Job Tenure?" National Bureau of Economic Research Working Paper.

As noted earlier, unionism can affect productivity in ways other than reducing turnover, thus leaving uncertain the net effect of unions on productivity. Traditional analyses of unionism and productivity based on case studies of particular establishments have cited examples in which positive effects dominate and others in which negative effects dominate. By their very nature, however, case studies cannot give a broad quantitative assessment of the net effect of unionism on productivity.

Our analyses of newly available data on unionism and output per

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worker in many establishments or sectors suggests that the monopoly view of unions as a major deterrent to productivity is erroneous. In some settings, unionism leads to *higher* productivity, not only because of the greater capital intensity and higher labor quality, but also because of what can best be termed institutional-response factors.

Table III summarizes the available estimates of the union productivity effect. The calculations in the table are based on statistical

TABLE III. *Estimates of the Impact of Unionism on Productivity**

SETTING	ESTIMATED INCREASE OR DECREASE IN OUTPUT PER WORKER DUE TO UNIONISM
All 2-digit Standard Industrial Classification (SIC) manufacturing industries[1]	20 to 25%
Wooden household furniture[2]	15
Cement[3]	6 to 8
Underground bituminous coal, 1965[4]	25 to 30
Underground bituminous coal, 1975[4]	–20 to –25

* Sources: All calculations are based on the analyses cited below, which control for capital-labor ratios and diverse other factors that may influence productivity.
[1] From C. Brown and J. Medoff, "Trade Unions in the Production Process," *Journal of Political Economy*, June 1978, pp. 355-378.
[2] From J. Frantz, "The Impact of Trade Unions on Productivity in the Wood Household Furniture Industry," Senior Honors Thesis, Harvard University, March 1976.
[3] From K. Clark, "Unions and Productivity in the Cement Industry," Doctoral Thesis, Harvard University, September 1978.
[4] From R. B. Freeman, J. L. Medoff, and M. Connerton, "Industrial Relations and Productivity; A Study of the U.S. Bituminous Coal Industry," in progress.

analyses that relate output per worker to unionization, controlling for capital per worker, the skill of workers (in some of the analyses), and other relevant factors. While all of the studies are subject to some statistical problems and thus must be treated cautiously, a general pattern emerges. In manufacturing, productivity in the organized sector appears to be substantially higher than in the unorganized sector, by an amount that could roughly offset the increase in total costs attributable to higher union wages.

In the typical manufacturing industry, the substantially lower quit rates under collective bargaining can explain about one-fifth of the estimated positive union productivity effect. Kim Clark, in his study of the cement industry, noted that from his discussions with individuals at recently organized plants, it appeared that the entrance of a union was usually followed by major alterations in

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operations. Interestingly, the enterprise typically changed plant management, suggesting that the union drive was an important signal to top management of ineffective lower-level managerial personnel: The drive thus provided valuable information or shock of a distinctive kind. Perhaps most importantly, the discussions with union and management officials in the cement industry indicated that firms often adopted more efficiency-oriented and less paternalistic personnel policies in response to unionism in order to raise productivity and meet higher wage demands.

On the other side of the picture, our analysis (with Marguerite Connerton) of productivity in organized and unorganized underground bituminuous coal mines indicates that as industrial relations in the union sector deteriorated in the late 1960's and 1970's, unionism became associated with negative productivity effects. As the internal problems of the United Mine Workers have grown and the ability of management to deal effectively with labor issues seems to have deteriorated (most likely because the industry's rapid growth has yielded supervisors who are on average younger and less experienced in labor relations than was typical prior to the late 1960's), the factors that lower productivity have come to dominate underground bituminous coal mining. The striking change in the estimated impact of unionism on productivity in this industry during the past decade highlights an important fact: The effects of unionism are not universal constants but rather depend on specific industrial-relations settings. An important, and as yet uncompleted task is to determine the differential impact of various industrial-relations practices on productivity and to discover, as far as is possible, the reasons for these differing impacts.

To repeat, unionism may increase productivity in some settings and decrease it in others. If the increase in productivity is greater than the increase in average unit costs due to the union wage effect, then the profit rate will increase; if not, the rate of profit will fall. There is limited tentative evidence that, on average, net profits are reduced somewhat by unionism, particularly in oligopolistic industries, though there are notable exceptions. At present, there is no definitive accounting of what proportion of the union wage effect comes at the expense of capital, other labor, or consumers, and what portion is offset by previously unexploited possibilities for productivity improvements.

Finally, it is important to note that despite what some critics of unions might claim, strikes do not seem to cost society a substantial amount of goods and services. For the economy as a whole, the

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percentage of total working time lost directly to strikes during the past two decades has never been greater than 0.5 percent and has averaged about 0.2 percent. Even "national emergency" disputes—those that would be expected to have the largest repercussions on the economy—do not have major deleterious impacts. Though highly publicized, the days idle because of the direct and indirect effects of strikes represent only a minuscule fraction of the total days worked in the U.S. economy.

Personnel practices and employee benefits

Under the monopoly view, the exit and entry of workers permits each individual to find a firm offering the mix of employee benefits and personnel policies that he or she prefers. As noted earlier, however, the efficiency of this mechanism breaks down when there are public goods at the workplace and when workers are not able to change firms easily. In the voice view, a union provides management with information at the bargaining table concerning policies affecting its entire membership (e.g., the mix of the employee-compensation package or the firm's employment practices during a downturn) which can be expected to be different from that derived from the movements of marginal workers. It is likely, then, that the package of employee benefits and employment-adjustment policies will be different in firms covered by collective bargaining than in those that are not. To what extent does the mix of goods at the workplace differ between union and nonunion firms?

Data on the remuneration of individual workers and on the expenditures for employees by firms show that the proportion of compensation allotted to fringe benefits is markedly higher for organized blue-collar workers than for similar nonunion workers. Within most industries, important fringes such as pensions, and life, accident, and health insurance are much more likely to be found in unionized establishments. While some of the difference is attributable to the higher wages paid to union workers (since higher-wage workers generally "buy" more fringes), Table IV on page 83 reveals that much of the difference is in fact due to the effect of unionism. The table also indicates that the greatest increases in fringes induced by unionism are for deferred compensation, which is generally favored by older, more stable employees. This is consistent with the view that unions are more responsive to senior, less-mobile workers.

Studies concerning workers' preferences for fringes, and managers' awareness of these preferences, provide support for the claim that a

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TABLE IV. *Estimates of the Effect of Unions on Major Fringe Benefits with the Total Compensation of Workers Held Fixed**

FRINGE BENEFIT	CENTS PER MANHOUR ON FRINGES, ALL ESTABLISHMENTS	PERCENTAGE OF ALL ESTABLISHMENTS WITH SPECIFIED FRINGES	PERCENTAGE AMOUNT BY WHICH DOLLARS PER MANHOUR SPENT ON FRINGES IS INCREASED OR REDUCED BY UNIONISM
Total fringes	40.9	—	14%
Life, accident, health insurance	10.1	85.0%	48
Pensions	9.4	62.6	21
Vacation pay	8.3	83.6	19
Holiday pay	5.2	77.8	15
Bonuses	1.8	27.1	–49

* Source: R. B. Freeman, "The Effect of Trade Unionism on Fringe Benefits," National Bureau of Economic Research Working Paper No. 292, October 1978.

union can provide management with information that affects the composition of the pay package. For instance, Richard Lester's 1967 review of surveys of managerial perceptions of worker preferences found "limited data . . . that workers value benefits more highly compared to wages than employers believe their workers do." Equally important is the apparent role of unions in evaluating the complex costs and prospective advantages of modern fringe benefits and transmitting these facts to their members. It is unlikely that an individual worker will invest the time required to evaluate alternative compensation packages. Unions, however, can hire the lawyers, actuaries, and other experts necessary to perform these analyses.

The fact that many nonunion firms have imitated several of the provisions of union contracts is indicative of the better information available about workers' preferences in union settings. There is no reason for a nonunion firm to copy what union firms do unless union contracts offer forms of compensation that are also preferred by the average nonunion worker, since the satisfaction of the average (not the marginal) is what matters in a union-representation election. It is also important to note that to the extent that nonunion firms adopt union-initiated practices, estimates of the impact of unionism on the prevalence of such practices will be understated.

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Finally, it should be pointed out that knowledgeable representatives of both labor and management agree that one of the major functions performed by American trade unions is determining a division of the compensation package that will be acceptable to workers. They recognize that some of the most important bargaining under unionism goes on *inside* the union, where the desires of workers with disparate interests are weighed in a political process that decides the union's positions at the bargaining table.

One of the most important personnel decisions made by a firm is how to adjust its employment and wages in response to swings in economic demand: by temporary layoffs, cuts in wage growth, reduced hours, or voluntary attrition. The evidence indicates that the layoff mechanism is used to a much greater extent in unionized than in nonunion establishments. It is important to note, however, that the vast majority of these layoffs are temporary, in that the laid-off members await rehire and are recalled after a short spell of unemployment.

By contrast, evidence on the effect on wages of swings in the demand for products shows that the responsiveness of wage rates is smaller in union than in nonunion firms. For example, within the typical manufacturing industry during the very severe economic downturn from May 1973 to May 1975 the fraction of hourly blue-collar union members unemployed due to layoffs grew more than twice the comparable fraction for otherwise similar nonmembers, but the wages of the unionized workers grew by 18.1 percent versus 16.6 percent for nonunion workers. More generally, analysis of monthly data covering the 1958-to-1975 period for manufacturing industries indicates that the hourly wages of production workers vary with shipments in such a way as to reduce the need for layoffs to a greater extent in firms that are nonunion than in those that are unionized, while there is virtually no such linkage in union settings. These findings reflect the fact that since the late 1950's about two-thirds of the major contract manufacturing workforce has come to be covered by agreements of three years or more, and nearly all have provisions for automatic wage increases.

Why do temporary layoffs dominate alternative adjustment mechanisms to a much greater extent in firms that are unionized than in those that are not? The most reasonable explanation is that under the provisions of most union contracts—which specify that junior workers will be layed off before those with more company service—senior workers, who can be expected to have greater power in organized firms, will generally prefer layoffs over the alternatives.

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The distribution of income

One of the striking implications of the monopoly view, which runs counter to popular thought, is that union wage gains increase inequality in the labor market. According to the monopoly model, the workers displaced from unionized firms as a result of union wage gains raise the supply of labor to nonunion firms, which can therefore be expected to reduce wages. Thus in the monopoly view unionized workers are likely to be made better off at the expense of nonunion workers. The fact that organized blue-collar workers would tend to be more skilled and higher paid than other blue-collar workers even in the absence of unionism implies further that unionism benefits "labor's elite" at the expense of those with less skill and earning power. Since many people have supported unions in the belief they reduce economic inequality, evidence that unions have the opposite effect would be a strong argument against the union movement.

In fact, the collective-voice/institutional-response model suggests very different effects on equality than does the monopoly view. Given that union decisions are based on a political process, and given that the majority of union members are likely to have earnings below the mean (including white-collar workers) in any workplace, unions can be expected to seek to reduce wage inequality. Union members are also likely to favor a less-dispersed distribution of earnings for reasons of ideology and organizational solidarity. Finally, by its nature, collective bargaining reduces managerial discretion in the wage-setting process, and this should also reduce differences among similarly situated workers.

Two common union wage policies exemplify unions' efforts to reduce economic inequality. The first is the long-standing policy of pushing for "standard rates"—uniform rates for comparable workers across establishments, and for given occupational classes within establishments. While many large nonunion enterprises today also employ formal wage-setting practices, personal differentials based on service, performance, favoritism, or other factors are more common in the nonunion than in the union sector. For example, so-called "merit" plans for wage adjustment appear to be less prevalent in the union sector. In the 1970's, while about 43 percent of all companies offered plant employees "wage adjustment based on a merit plan," only 13 percent of major union contracts mentioned these plans. Overall, according to Slichter, Healy, and Livernash, "the influence of unions has clearly been one of minimizing and eliminating judgment-based differences in pay for individuals em-

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ployed on the same job" and of "removing ability and performance judgments as a factor in individual pay for job performance." One important potential result of these policies is a reduction of inequality, possibly at the expense of efficiency, which may be lessened because the reward for individual effort is reduced. Another important potential result of this policy is that wage discrimination against minorities is likely to be less in unionized than in nonunionized settings.

Union policies favoring seniority in promotion, and job-posting and bidding systems in which workers are informed about new openings and can bid for promotions, can also be expected to have egalitarian consequences. The possibility that arbitrary supervisory judgments will determine the career of a worker is greatly reduced by the development of formal rules which treat each worker identically.

Thus, according to the monopoly model, trade unionism raises inequality, whereas according to the collective-voice/institutional-response model, it reduces inequality. What are the facts?

Our empirical estimates, based on new data, show that standardization policies have substantially reduced wage inequality, and that this effect dominates the monopoly wage effect. When, for instance, the distribution of earnings for male blue-collar workers is graphed, the results for unionized workers in both the manufacturing and nonmanufacturing sectors show a much narrower distribution, compressed at the extremes and radically peaked in the middle. For nonunion workers, by contrast, the graphs show a much more dispersed pattern of earnings.

In addition to reducing earnings inequality among blue-collar workers, union wage policies contribute to the equalization of wages by decreasing the differential between covered blue-collar workers and uncovered white-collar workers. In manufacturing, though white-collar workers earn an average of 49 percent more than blue-collar workers, our estimates indicate that in unionized enterprises this premium is only 32 percent; in the nonmanufacturing sector, where white-collar workers average 31 percent more in earnings than blue-collar workers, the estimated differential is only 19 percent where there are unions.

But to obtain the net effect of unionism on earnings inequality it is necessary to add the *decrease* in inequality due to wage standardization and the *decrease* due to the reduction in the white-collar/blue-collar differential to the *increase* due to the greater wages of blue-collar union workers. Our calculations show clearly that the

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dominant influence affecting earnings inequality is the standardization of rates within the union sector. As a result of the large reduction in inequality attributable to standard-rate policies, the variance in the natural logarithm of earnings (a common measure of inequality) is reduced by 21 percent in manufacturing and by 27 percent in the nonmanufacturing sector. Since the distribution of income is, as Christopher Jencks and others have shown, relatively stable in the face of dramatic changes in such important social factors as the distribution of schooling, these effects must be considered large. Unionism thus appears to *reduce* wage dispersion in the United States, which implies that the voice/response effects of the institution dominate the monopoly wage effect on this front.

Race and unionism

There is a history of conflict between trade-union seniority rules and affirmative-action programs and of discrimination by craft unions. But empirical evidence, as Orley Ashenfelter was first to note, shows clearly that on average, unions aid black workers and reduce differences based on race. Unions affect the distribution of earnings between blacks and whites in at least three ways.

First, because blacks are actually more likely than whites to be union members, they are more likely to benefit from union wage gains. In the 1973-to-1975 period, 30 percent of black workers were organized compared to 24 percent of white workers. The greater degree of organization among blacks reflects the fact that they are overrepresented among blue-collar factory workers and underrepresented among the less organized white-collar workers. (While minorities are still not proportionately represented in some important craft unions, the latest apprenticeship data show that 18.1 percent of apprentices in 1976 were minorities; 9.4 percent of all apprentices were blacks, while 8.7 percent were members of other minority groups.)

Second, unionization reduces discriminatory differences within organized firms through the standard-rate and promotion-by-seniority policies described earlier. While organized black workers make less than organized white workers, the differential is smaller than among unorganized workers. Estimates using data from the 1973 to 1975 May *Current Population Surveys* show that among all unionized blue-collar workers in the private sector, the hourly wage for blacks was about 9 percent lower than for whites. Among comparable nonunion workers, the figure was about 15 percent. Senior-

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ity rules, which are often regarded as inimical to the interests of black workers because they conflict with affirmative-action programs, should in the long run be beneficial to blacks. When promotion depends on seniority, discrimination on the basis of race is impeded.

Third, an analysis by Duane Leigh of the effect of unionism on the quit rates of black and white workers shows that, with wages held constant, the turnover of blacks is as much reduced by unions as is the turnover of whites. This implies that the non-wage benefits associated with unionism improve conditions as much for blacks as for whites.

In sum, while there is discrimination in the union sector (as elsewhere in the economy), trade unions raise black earnings relative to white earnings and thus, on the whole, help reduce differences based on race.

The corruption issue

Under the monopoly view, the potential to use union monopoly power to raise wages and to extort funds from firms—particularly small, weak firms—fosters a significant amount of corruption and undemocratic behavior in the union movement. Many unions are alleged to be run by bosses or racketeers. But while the monopoly view has been highly publicized, the vast majority of evidence appears to support the voice view that unions generally are democratic political organizations and are responsive to the will of their members.

There are, to begin with, internal and external forces that push unions—both locals and internationals—toward being responsive to the wishes of their members. Union constitutions typically mandate democratic procedures and require conventions or referenda to discern the membership's sentiment on important issues, and fair and frequent elections to assess the members' satisfaction with their leadership. While at one time U.S. labor law dealt only peripherally with the internal workings of unions, the Landrum-Griffin Act of 1959 provides strong federal sanctions against corruption and undemocratic practices inside unions. It contains provisions that require local, intermediate, and international unions to hold elections at fixed, reasonably short intervals, that guarantee members a reasonable opportunity to nominate candidates, run for office, and freely criticize union leaders and their policies, that prohibit incumbents from using union funds to support the election of a given can-

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didate for office in the union and from disseminating propaganda for one candidate without doing as much for his or her opponent, and that require officials to file information on the financial affairs of the union and its leaders and on its constitutional provisions. Moreover, the country's labor law provides an election procedure under which a group of workers can decertify its union and become unorganized, replace one union with another, or attempt to change the boundaries of an existing bargaining unit.

The evidence strongly suggests that the vast majority of local and international unions in the U.S. are quite democratic and suffer only rare breaches of internal democracy. From fiscal years 1965 to 1974, only 239 charges of improper conduct affecting the outcome of a union election were judged to have merit, according to information issued by the Department of Labor. Since approximately 200,000 elections were held by local, intermediate, and international unions during this period, the percentage of elections in which there were proven violations is approximately 0.1 percent. Moreover, it is probably true that in a fair number of these cases the violation was due to ignorance of the details of labor law on the part of union officials rather than to an explict attempt to affect an election's outcome. And while surely there were some improper actions that were either not reported or not proved, the miniscule number of those which were suggests that number must also have been extremely small.

While many national union leaders tend to remain ensconced in office for years, at the local level a fair number of incumbents regularly get unseated, as would be expected in a well-functioning democracy. One pertinent study by Leon Appelbaum analyzed data on the turnover of union leaders in 94 locals in the Milwaukee, Wisconsin area between 1960 and 1962: 40 percent of the officials in office at the beginning of the period were not in office two years later.

The fact that the majority of members in most unions are satisfied with their union's internal operations is shown by the results of union-decertification elections conducted by the National Labor Relations Board. In each year during the past decade, only about 0.1 percent of all union members were in bargaining units that voted to decertify the union representing them.

Finally, recent surveys of members' views of the internal affairs of their unions indicate that the vast majority are satisfied with union operations. About 70 percent said they had "no problems" with their union in 1972-73, while about 80 percent had no problems in 1969-

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70. Roughly half of those who had problems in 1972-73 regarded them as "slight" or as "not really a problem at all." In both surveys, less than 10 percent of union members were dissatisfied with how democratically their unions were run, the conduct of their union's leadership, or the officials' policies.

The internal operation of unions aside, the collective-voice/institutional-response analysis stresses the role of unionism in increasing democracy at the workplace by providing workers with a channel for expressing their preferences to management and increasing workers' willingness to complain about undesirable conditions. Evidence from surveys of workers' job satisfaction tends to support this view. In these surveys the reported job satisfaction of unionized workers is less than the reported satisfaction of comparable nonunion workers. However, the union members are also more likely to state that they are "unwilling to change jobs under any circumstance" or "would never consider moving to a new job," than are their "more satisfied" nonunion counterparts. The most direct interpretation of the puzzle is that collective organization provides support that encourages the voicing of dissatisfaction. In contrast to most economic benefits, which increase both utility and stated satisfaction, "voice" increases utility while increasing stated dissatisfaction. In addition, because a union will collect more information than an individual and then disseminate it to every member, though union members know that their jobs are significantly better than the alternatives, they will also know that they are far from ideal. And since voice is also a tool of conflict, good strategists, unlike *Voltaire's Pangloss, will not proclaim their workplaces as "the* best of all possible worlds."

What about the view that unions are corrupt institutions? The evidence from the surveys clearly runs counter to this stereotype. Ninety-nine percent of union members in both 1969-70 and 1972-73 stated that they had "no problems" with graft or corruption among their leaders. Moreover, after a careful analysis of the extent of corruption in the American labor movement, Derek Bok and John Dunlop, writing in 1970, stressed the honesty of most labor leaders:

> Although the record in this country compares unfavorably with that of many other nations, legal safeguards now go far to curb dishonesty and encourage democratic behavior. Probably only a tiny fraction of all union officials in America would stoop to serious abuse. The overwhelming majority of labor leaders are honest men who take seriously their obligation to represent the interest of the members who have elected them to office.

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Finally, in what ways has organized labor affected outcomes in the American political arena? Have unions had greater success supporting "special-interest" legislation or "social" legislation that benefits lower-income persons and workers in general? Despite the bad press given some union efforts to obtain "special-interest" benefits from lawmakers, much union political muscle has been devoted to promoting legislation that would be of no obvious material gain to unionized workers—except as members of the overall working population. For instance, organized labor was quite active in pushing for the passage of the Public Accommodation Act of 1964, the Voting Rights Act of 1965, equal-employment-opportunity legislation, anti-poverty legislation, and the Occupational Safety and Health Act of 1971.

On the other hand, most union-favored special-interest legislation has failed to pass Congress, though important legislation opposed by unions as detrimental to their power or even their survival has been passed. The last major piece of legislation regulating collective bargaining and unionism, the Landrum-Griffin bill, was enacted in 1959 over the vociferous opposition of unions, while a mild 1977 labor-law-reform bill strongly favored by unions failed to clear the Congress. Typically, only when unions and management in a particular sector have united in favor of legislation to benefit that sector have unions had much success in gaining support for their "special-interest" legislative proposals.

All in all, though unions fight for self-interest legislation—as do other groups in our pluralist society—they have scored their greatest political victories on more general social legislation. In terms of actual outcomes, unions have been more effective as a voice of the whole working population and the disadvantaged than they have been as a monopoly institution seeking to increase its monopoly power.

Explaining managerial opposition

If, in addition to its negative monopoly effects, trade unionism is associated with substantial positive effects on the operation of the economy and on the performance of firms, why do so many U.S. firms oppose unions so vehemently? There are in fact several reasons.

First, the bulk of the economic gains that spring from unionism accrue to workers and not to owners or managers. Managers are unlikely to see any personal benefits in their subordinates' unioniza-

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tion, but are likely to be quite aware of the costs: a diminution of their power, the need to work harder, the loss of operating flexibility, and the like.

Second, though productivity might typically be higher in union than in otherwise comparable nonunion work settings, so too are wages. It would seem, given the objectives and actions of most unions, that the rate of return on capital would be lower under collective bargaining, although there are important exceptions. Thus, there is risk in unionization; the firm may be able to rationalize operations, have good relations with the union, and maintain its profit rate—or it may not. In addition, while the total cost of strikes to society as a whole has been shown to be quite small, the potential cost to a particular firm can be substantial. Since managers—like most other people—dislike taking risks, we would expect opposition to unions even if on average the benefits to firms equal the costs. Moreover, given the wide-ranging differences in the effects of unions on economic performance, at least some managerial opposition surely arises from enterprises in which the expected benefits of collective bargaining are small but the expected costs high. Even the most vocal advocate of the collective-voice/institutional-response view of unionism would admit that, though functional in many industrial settings, unions are not functional in others—and one must expect greater managerial opposition in the latter cases.

Third, management may find unionism expensive, difficult, and very threatening in its initial stages, when modes of operation must be altered if efficiency is to be improved. New and different types of management policies are needed under unionism, and these require either changes in the behavior of current management, or—as appears to be the case in many just-organized firms—a new set of managers.

Finally, U.S. management has generally adopted an ideology of top-down enlightened control, under which unions are seen as both a cause and an effect of managerial failure. In this view, unions interfere with management's efforts to carry out its social function of ensuring that goods and services are produced efficiently. In addition, because unions typically come into existence as a result of management's mistakes in dealing with its workforce, managers frequently resent what unionization implies about their own past performances.

We believe that our analysis of unionism has opened up a host of neglected issues regarding the key worker institution in the

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American capitalist system. While some of our findings will surely be altered by additional research and some may even be proven wrong, we do believe that our findings present a reasonably valid picture of modern unionism in our country. It stands in sharp contrast to the monopoly view of trade unions and to many popular opinions about them. And if, as we have found, the positive effects of unions are in many settings more important than their negative effects, then the on-going decline of private-sector unionism—a development unique to the U.S. among Western developed countries —deserves serious public attention.

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Oh, Bring Back My Party to Me!

AARON WILDAVSKY

***James W. Ceaser*: Presidential Selection: Theory and Development.** *Princeton University Press. 353 pp. $20.00 cloth; $4.95 paper.*

WHEN Betty Furness said (after a White House meeting with consumer groups) that no one ever talked to Lyndon Johnson like that, was she suggesting that Jimmy Carter lacks a presidential personality or is it that his Democratic predecessors still had the semblance of a political party behind them? If citizens suspect that the President might fail to be renominated almost out of embarrassment, as if the country called a primary and no one was interested enough to show up, could that conceivably have occurred to a president who wasn't only a particular person but also a political party? Is it true that the number and importance of single-issue "special-interest" groups has risen way out of proportion to their past power, or is it that the political parties that used to contain them (enforcing moderation and compromise, as those who felt the absence of clear and consistent issue positions used to complain) have declined? If those conniving old party bosses and their smelly smoked-filled rooms have disappeared, if a transparent participatory democracy, in which every activist has a say, has taken their place, if "open nominations openly arrived at" have fulfilled the Wilsonian insistence that parties serve leaders rather than the other way round—why are we so unhappy with the outcome? Has participation suddenly become a bad thing? Why is it that direct party democracy, in which the participants are activists who turn out every four years at primary time, arrayed according to biological attributes like age, sex, and race, has left the nation devoid of effective leadership?

Because, James Ceaser answers in his enlightening and insightful discussion of doctrines of presidential selection, by denigrating the political-party tie that binds, the connective tissue between winning the nomination and governing the nation has been severed. What no external enemy could have done—compelling us to kill off our protective shield of political parties—we-the-people have done in the name of direct democracy. It is self-inflicted wounds—doing ourselves in, in the name of serving our highest principles—that are the most difficult to bear.

The strength and significance of Ceaser's book, *Presidential Selec-*

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tion: Theory and Development, lies in his ability to recapture and reformulate the older understanding that running for office and governing the nation were (and ought consciously to be) indissolubly linked. Arranging selection so as to weaken election, and arranging both to perform poorly so as to ruin re-election, would once not have been deemed wise. Ceaser shows that doing it all in the name of democracy only makes it worse, compounding mischief with misunderstanding. He explains what happened:

> Over the past 15 years the nomination process has thus been transformed from a mixed system, in which control over the nomination was shared by the people and the party organizations, to what can be termed a plebiscitary system in which the key actors are the people and the individual aspirants. Along with the emergence of this new institutional form has come a new method of generating support in presidential campaigns: "popular leadership," or the attempt by individual aspirants to carve out a personal mass constituency by their own programmatic and personality appeals and by the use of large personal campaign organizations of their own creation. At the nomination stage, this form of leadership takes place entirely without the filter of traditional partisan appeals, as the nomination race is in effect a national nonpartisan contest. But even at the final election stage, the personalistic aspects of the campaigns are becoming increasingly important relative to partisan appeals, a fact which follows in large measure from the way in which the candidates are now nominated.

What were the consequences?

> The difficulties experienced by the Democrats, many argued, were directly related to the inability of the new system to foster harmony among the factions of the party. The new system, it was said, encouraged and rewarded the more extreme appeals. On the Republican side, the Watergate break-in and the other assortment of dirty tricks were also linked to certain features of the selection system. These acts were the work of a wholly personal organization dedicated to the election of a particular man. A party-run organization, it was often argued, would never have allowed itself to go to these extremes, as it would have been more independent of the candidate and less willing to sacrifice the long-term reputation of the party for the success of one individual.

Why did it happen? Ceaser believes that

> . . . the open selection system is what creates the necessity for contenders to build full organizations of their own; and it is the open system that destroys the intermediary power brokers within the party who can offer an effective check to the president's power. From the vantage point of the president, the open party consists of an amorphous mass whose only means of resistance is a periodic message sent through political polls. The public may eventually humble an incumbent by denying him renomination, but it cannot, like the political

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power broker, negotiate with him, sit in his cabinet, or tell him that its support will be contingent on certain actions.

What might be done to improve the situation? Starting with a sound supposition—"the way in which power is sought has a profound influence on the way it is exercised"—Ceaser sets out five functions that should be performed by any system of selection to public office in representative government:

> The selection process should minimize the harmful results of the pursuit of power by ambitious contenders, help establish the proper kind of presidential leadership and proper scope of executive power, help secure a competent executive, ensure a legitimate accession, and provide for the proper degree of choice and change.

Though Americans have grown used to thinking of the separation of powers as playing a part in countering ambition, Ceaser notes in a perceptive comment that few think of it in connection with election to office. A variety of examples helps the reader understand the context in which failure to counter ambition unhinges political relationships:

> The major problems posed by the ambition of presidential contenders can be classified under two broad headings. The first is the disruption of the proper functioning of a major institution that may result when officeholders use their position to further their presidential aspirations. One striking instance of this problem was identified by James Sterling Young in his treatment of the caucus system of nomination in the early nineteenth century. Young shows how the caucus system led cabinet officers having presidential aspirations to court the members of Congress, with the consequence that the unity and independence of the executive branch were undermined. The failure of the selection system in this instance to structure presidential ambition in accord with the intended character of the Constitution very nearly led to a transformation of the entire political system. A contemporary example of this general problem can perhaps be seen in the decline of the Senate as a serious deliberative body. In the view of a number of students of Congress, this transformation can be explained in large measure by the attempt of many senators to position themselves for a presidential candidacy by engaging in the kind of public "posturing" that the new selection system seems to require.

Applying these insights to contemporary concerns, Ceaser shows how consequences about which we complain are attributable to processes we recently approved:

> Finally, the method of selection affects the power of the president in a more immediate sense by determining the groups and constituencies to which the candidates, including an incumbent seeking re-election, must appeal. As the system changes, candidates incur different obligations and operate under different constraints. When nominations were dominated by party organization, a president was compelled to deal

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with specific power brokers within his party and to take account of the interests they represented. Traditional parties, whatever their faults, offered an informal check on the exercise of presidential power. At the same time they also provided the president with a valuable resource for gaining support with the public and with members of Congress. Under the current plebiscitary system in which candidates campaign directly for the nomination and build their own personal mass constituencies and organizations, the check provided against the executive by the party has been weakened. This may give modern presidents greater discretion, although they may now be forced to deal directly with interest-group leaders without having the benefit of the "buffer" provided by the party power brokers. To the extent that they can avoid this constraint, it will be by their ability to appeal directly to the public through techniques of mass persuasion.

There was a time, however, earlier in American history, when parties were viewed as institutions for *controlling* popular leadership rather than as vehicles for participation by party activists. This view was prominently associated with Martin Van Buren, whose reputation as a party theorist Ceaser does much to refurbish:

Van Buren proposed the establishment of permanent competition between two parties that were safe and moderate in their principles and that together would normally control the path of access to the presidency. Aspirants would then be forced to adopt the principles of one or another of these parties, thereby avoiding appeals to more dangerous currents of opinion. The selection of leaders could best be determined in the initial preselection phase by knowledgeable politicians, and it was to such persons that Van Buren assigned the task of nomination, at first (unsuccessfully) in the form of the Congressional caucus and later in the form of the national convention. The final test between the candidates would come at the final election stage, where the voters, shielded from the confusion likely to characterize a race among numerous candidate factions, could make their choice between two tested and well-known parties.

Inevitably, such a conception suggests limitation on popular rule. Ceaser's response is the same as Van Buren's, namely, easy access for third parties should the others fall too far from popular views.

THE position of political parties in structuring conflict—once accepted as their contribution to lessening the potential chaos inherent in the cosmos of popular rule—has been undermined by treating elite participation as an end in itself rather than an instrument of self-government. The very idea that parties would read certain issues out of politics for the time being or prevent others from reaching the summit of public attention has been treated as equivalent to treason against the idea of democracy. Participants in the academic debates over "the power structure of American communities," for example, were so fearful of ostracism from the main body of moral men and women that one side pronounced anathema on

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those elites who sought to shape issues, while the other side denied they did. No one, so far as I recall, argued that shaping issues was an essential and honorable function of parties in popular rule and that if it wasn't being done it ought to be. James Ceaser now has that honor.

Why, one might ask today, does an electorate far better educated than in the past need anyone—let alone political parties with their less than exemplary characters and their lack of advanced degrees—to limit the range of issues and structure the size of choices on issues? I could advance arguments about the impossibility of focusing on everything or the need to give parties a role in policy if they are also to be available for protection. But nowadays I think a single word should suffice—*energy!* When archeologists from outer space exhume our remains they may wonder not a little why the United States subsidized the import of a commodity whose cost was sapping its strength, or why it tied its hands and feet, stopped its ears, stuffed its mouth, closed its eyes, and wondered why it wasn't getting anywhere. Perhaps, just barely possibly, the slightest suggestion that the cost of decision could not be entirely avoided, might have made political parties valuable.

The author would like to bring back parties by limiting primaries so as to strengthen the role of party regulars in candidate selection. His strategy is simplicity itself, a little of the hair of the dog that bit you:

> The reforms in the Democratic Party proceeded under the assumption that the national party, rather than state law or state party regulations, had final control over the manner in which delegates are selected, and this idea has very nearly been endorsed by the Supreme Court. A full acceptance of this view would mean that a party could write its own delegate-selection rules with a view to closing the delegate-selection process. There is thus no reason in theory why a national party could not now begin openly to encourage states to abandon primaries and even, if necessary, place an upper limit on the number of delegates chosen by this means, perhaps by allotting them on a rotating basis to those states preferring this method.

Centralized parties would be used to undo their own mischief. I am not sanguine that this is either feasible or desirable. If we want parties compatible with popular rule, we must convince more people to prefer them. James Ceaser's elegant study has made more than a good start. I do not doubt that as conditions get worse, nostalgia for the good old days, when leaders led and parties had bosses, will fill the land. The time has come to ask what kind of new parties might be supported (and be supportable) by modern people like us.

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A Political Fiction?

STEVEN LAGERFELD

***Ernest Callenbach*: Ecotopia.** Banyan Tree Books. 167 pp. $2.95. Bantam Books. 212 pp. $1.95.

IN 1972, the report of the Club of Rome, *The Limits to Growth,* predicted global catastrophe within as little as 70 years if industrial society continued in what the report considered its wasteful ways. Although the book was a resolutely technical document, packed with charts, graphs, and statistics, it was startling enough to capture the imagination of many. But if it was dramatically clear about the catastrophes that would result if all those curves shot off into outer space, it left the shape of its "alternative" futures more than a little fuzzy. *The Limits to Growth* galvanized a constituency of environmentalists and others with roots in the "counterculture" for an answer to the question, "What is to be done?"

Appropriately, the answer arrived in the form of a novel, Ernest Callenbach's *Ecotopia.* As its title suggests, it describes a utopia, an "ecologically ideal society" that shares its name with the book. Mr. Callenbach originally published the book himself in 1975 in Berkeley, California, and it enjoyed what for a self-published book must be termed a remarkable—and perhaps significant—success. It caught on underground, was republished by a major paperback publisher, and today—with nearly 150,000 copies in print—is something of a best-seller, widely read and discussed on the West Coast and gradually finding its way East.

The book begins in 1999 when a latter-day *New York Times* sends its star international reporter, William Weston, to Ecotopia, a country isolated Chinese-style since its formation in 1980. Weston's is the first visit ever by an American. Even Americans living near the border have no idea what goes on in Ecotopia, and to arrange passage, Weston has to overcome their suspicion that Ecotopians engage in cannibalism and other bizarre practices. But the Ecotopian frontier turns out to be serenity itself, marked by a "picturesquely weathered wooden fence"—which ought to tip the reader

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to the fact that Weston is entering a land where good taste requires that everything including toothbrushes be made of picturesquely weathered wood. Ecotopia, it turns out, is composed of what was once Oregon, Washington, and Northern California (Southern California apparently having been deemed by Callenbach so hopelessly vulgar as to be beyond salvation).

Ecotopia reads like a satire of an environmentalist's daydream. Border guards aren't eager to allow Weston's pollution-spewing automobile across, but relent when they decide that the prevailing winds will blow the fumes back to America. When Weston has some harsh words for one of the guards, he is rewarded with a warm smile, a handshake, and the promise of friendship. The intrepid reporter is similarly befriended by his fellow passengers on the mysteriously quiet, fast, and, of course, pollution-free train that carries him to San Francisco. Surrounded by gently swaying hanging plants, the passengers recline on pillows, chat amiably, and smoke marijuana. Every car is bare except for pillows, plants, and bins which are faithfully used to recycle refuse.

ECOTOPIA is governed according to "stable-state" biological principles aimed at bringing man into harmony with nature. Recycling is only one of several practices rigidly, nay, religiously observed for this purpose. When, for instance, Weston arrives in the capital city, San Francisco, he finds it radically depopulated; its "vulgar" row houses (called "ticky-tacky boxes" by Ecotopians) demolished, their inhabitants moved to converted office buildings, the countryside, or to the many small "new towns." (These, by the way, are planned communities of about 50,000 people, not unlike those called for in the late and unlamented American "new towns" program.) All this has been carried out—Mr. Callenbach does not say how—in the interest of reducing and concentrating the population to avoid encroaching on nature. And Weston reports that, "Some radical Survivalist Party [the ruling party] thinkers believe that a proper population size would be the number of Indians who inhabited the territory before the Spaniards and Americans came—something less than a million, living entirely in thinly scattered bands!"

This dispersed population travels exclusively on a stupefyingly extensive mass-transportation system that is reminiscent of the Bay Area Rapid Transit System, provided compliments of the late Boeing Company of Seattle, now expropriated. When Weston asks how all this has been financed, he is told that "the cost of the entire roadbed from San Francisco to Seattle was about that of 10 SST's . . . the total social cost per person per mile on their trains was less than that for air transport. . . ." In short, he never does learn how it is financed, and a brief look at the Ecotopian economy deepens the reader's perplexity. All businesses in Ecotopia are worker-owned, outside investment is prohibited, and because all workers are equal partners, large firms are unwieldy and small ones predominate. The ideal firm, in fact, appears to be a small group of craftsmen working

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in wood or some other acceptable medium. Finally, there is only one significant tax in Ecotopia, a corporate income tax. The work week is 20 hours.

The Ecotopian economy is therefore "moral" or even "aesthetic." Certainly it is impossible that Mr. Callenbach's economy could ever produce anything offensive to the standards of good taste prevailing on college campuses, Martha's Vineyard, or in San Francisco. The whole nation, in short, is furnished in weathered wood, hanging plants, and natural fibers—the paraphernalia of anti-materialism.

The premier attraction of Ecotopia is not, however, its "moral" economy, but the nation's "life style." The allure of the Ecotopian way of life is so powerful that it leaves Weston—otherwise a caricature of the cynical newspaperman—too distracted to ask crucial questions about the economy, or about the population dispersal that produced such a pleasant, quiet urban environment. But then one suspects that in the sultry eroticism of the Ecotopian atmosphere no one, much less Mr. Callenbach's readers, would much trouble himself over such matters.

In Ecotopia sex suffuses all social life. Weston reports that Ecotopians are "very loose and playful with each other, as if they had endless time on their hands to explore whatever possibilities might come up." In one diary entry, he notes that on the several occasions he has interrupted couples in the midst of their "explorations," he was hardly even noticed. Ecotopians "have a secure sense of themselves as animals," he explains. Within four days of his arrival, he writes, "I find myself envying them this comfortableness in their biological beings. . . . I'm experimenting, trying to imitate them."

He begins with Marissa, a female lumberjack assigned to be his guide at a logging camp. She propositions him immediately ("I guessed you wouldn't mind some contact," she tells him afterward), and he accepts, igniting a steamy relationship that leads to his inevitable conversion to the Ecotopian way of life. It is not by any means a conventional sort of love, though. For one thing, fidelity is out the window. Marissa already has a sex partner, it turns out, though as she explains, he is "not a mate." ("Mates" are generally faithful except for "four holidays each year . . . when sexual promiscuity is widespread.") A good Ecotopian would savor the "freedom" of such an arrangement; the backward Weston finds it rough going. But he finally reaches this new maturity when, at a ritual war game —"tribal" combat with Indian weapons which is designed to allow males to release their innate aggression—he writes that she "looked around in an inviting fashion, and made no resistance when one of the winning warriors came up, propositioned her, and literally carried her away." Weston records in his diary a "deep acceptance" of her need for "freedom."

The theme uniting these experiences is that sex is purely an animal function, and so it is not surprising that the many sex scenes have the warmth of Times Square in January. Indeed, Mr. Callenbach goes out of his way to reproduce common pornography scenarios. Thus

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Weston finds himself in bed (actually, in a tent) with two women: "They were willing to play the game of anonymity.... These girls were very cool and matter of fact about it.... They seemed to regard sex the same way we'd regard eating, or maybe walking...." Later, Mr. Callenbach employs yet another overused scenario, when Weston is in a hospital recovering from wounds received during his own participation in the war games. "We believe in encouraging all your life forces," his doctor informs him solemnly, and Weston's nurse—who ought to be played by Linda Lovelace if a movie is ever made of the book—demonstrates what the doctor means.

Mr. Callenbach's version of sexual liberation leads, predictably, to the degradation of his characters. He can portray them only in a single sexual dimension—they fail to become "people" in the reader's imagination. Thus the two girls remain entirely faceless, the nurse is written off as stupid, and even Marissa, who later becomes Weston's "mate," fails to develop as a character. Her actions are endlessly described, mostly in a sexual context, but little sense of her as a person emerges. But one cannot really fault Mr. Callenbach for this on literary grounds. His characters are true to the world he creates for them: In a world where all inner restraints have dissolved, character and therefore "characters" cannot exist.

Not surprisingly, in Ecotopia all notions of privacy have disappeared. Everything from one's sexual activities to personal business is a matter of community concern. Weston must even allow everyone from his housemates to the wire operator to read and criticize his news dispatches. Manners and morals come to function as a bludgeon of social and political conformity. On one occasion, when Weston is cleaning up after dinner with a work crew, they accuse him of working too fast—"Very un-Ecotopian," he is told. "So I goofed off in the Ecotopian manner—drank a little beer, tossed some knives and forks into the sink.... But it was hard... to keep in touch with the other people—I'd focus on the task and blot them out." The Ecotopians can hardly imagine a more grievous sin than retreating into oneself, even for a minute, so they tease and tickle him. "They'll retrain me yet," Weston comments. Later, they will take more drastic steps: When Weston is agonizing over whether to return to the United States, a group of nameless but friendly Ecotopians kidnap him, and take him to a peaceful resort community to ponder his future. Interestingly, though, he is not to do so alone. Their main objective is to see to it that he is never alone, never without their "love" and "support"—a strategy known as "love bombing" in the pop-religion business.

Another curious Ecotopian practice is called "cooperative criticism," as, for example, when the entire clientele and staff of a restaurant adjourns to the kitchen to find the chef responsible for overcooking one customer's eggs. When the culprit is found she is determined by all present to be in fact overworked, and after an emotional debate everyone agrees that the kitchen's workload must be redistributed.

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This "genteel authoritarianism," as another observer has called it, echoes in the Ecotopian economy, but it is a veritable thunderclap in Ecotopian political life. To begin with, Ecotopia is essentially a one-party state. There is a small opposition party, but the Progressive Party, as it is called, turns out to be a small and ineffective band of capitalist malcontents dogged by the Ecotopian secret police(!). These secret police pay a visit to Weston—they turn out, of course, to be friendly fellows who only want what is best for him—and he assumes they are always keeping track of him and reading his mail. He does not find this disturbing, though, and apparently the reader is not supposed to either.

Many of the other features of the Ecotopian regime are also ominously familiar to even occasional students of real-life "utopias." Private property has been seized, inheritance forbidden, and large-scale government intervention initiated (although Ecotopia is in theory a decentralized state). Among the consequences of the latter is the ever-troublesome dispersal of the population. Of course, when one creates a utopia, one must assume that once the path to perfection has been revealed, all dissension and conflict will disappear, and everyone will go along for his own and the common good. It is precisely this assumption that allows Mr. Callenbach to retain the use of nuclear power (although it is being phased out), and locate huge solar and geothermal power plants at beautiful sites without having to explain how the "radicals" would be prevented from closing them down.

There are, however, two areas of conflict Mr. Callenbach does acknowledge. Departing from the concern for equality prevailing elsewhere in the book, blacks and other minorities are declared to have their own racial destinies. In Ecotopia the question of race is settled simply, by giving minorities "separate but equal" status, banishing them from paradise, and establishing independent racial city-states in enclaves like Chinatown and the Oakland ghetto. Ecotopia is lily-white. And, demonstrating anew his positively Cambodian penchant for relocation, Mr. Callenbach even has his Ecotopians consider a sort of latter-day mass urban renewal. "One scheme, which is currently being debated," Weston reports, "would relocate the entire black population in a new territory including Monterey Bay and the Salinas Valley. . . ."

The only justification offered for this official policy of separatism is the insufficient cultural advancement of blacks—they are not quite up to Ecotopian standards. As one black character puts it, "we're still making up for lost time." Weston, by this time more sympathetic to the Ecotopian point of view, observes somewhat condescendingly that

> Life within the black territories . . . has more holdovers from pre-Independence days. . . . In fact, a few private cars are still mysteriously tolerated, and people cling to symbols of the old ways: There is a brisk trade in high-quality Scotch whiskey and other luxury goods

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> which are hard to find in Ecotopia elsewhere. The per-capita income is said to be about 10 percent higher than in the white areas . . . .

Regarding women, the only other group who pose a problem, precisely the opposite solution is advanced: They are superior moral beings, an elect uniquely suited to governing the nation. Weston writes of the ruling party:

> While a majority of Survivalist Party members are women, many men are members also, and some indeed hold high party positions. The basic cooperation- and biology-oriented policies of the party, however, are usually considered to be derived mainly from female attitudes and interests; the chief opposition party—the Progressive Party—continues to express what are alleged by Survivalists to be outdated and destructive male attitudes. . . .

Ecotopia advertises itself as "politics fiction," yet Mr. Callenbach's astonishingly candid acknowledgement of the political and human price of his paradise belies this description. The political condition of Ecotopia is no fantasy; it is as comprehensible as a daily newspaper and as inevitable—if not as hideous—as the Gulag. The deepest fiction of the book, in this sense, resides not in its depiction of Ecotopia's political and social life, but of its economics of endless benefits without costs.

It would be pointless to criticize a utopian novel for its very utopianism but for the fact that *Ecotopia* represents the vision of an existing political agenda. Ralph Nader, for instance, graces the cover of the original edition with this commendation: "The book's impact . . . is the breadth of perspective that envelops the reader. None of the happy conditions in Ecotopia are beyond the technical or research reach of our society."

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CURRENT READING

Environmental Cancer

Few areas of scientific research have received as much public attention in recent years as has the study of cancer. But because cancer is the object of profound uncertainty and fear among laymen, and because its causes are still largely inscrutable to scientists, there is great potential for distortion, oversimplification, and sensationalism in the translation of tentative scientific findings into popular knowledge. The American Council on Science and Health has recently published a report by Dr. Elizabeth Whalen, its Executive Director, in which she tries to rectify some of these common misinterpretations of current cancer research.

One of the most widely publicized findings in the recent history of cancer study is from the work of Dr. John Higginson of the International Agency for Research on Cancer, who a decade ago estimated that 80-90 percent of all cancer cases are due to environmental causes. The word "environment" was used broadly to refer to *non-genetic* factors, which could include "life-style" factors such as smoking, as well as those factors that are the concern of environmental*ists*. But the message received by the general public was a narrower one. Dr. Higginson's findings touched off widespread concern about the relationship between cancer and the environment, which focused on questions about the presence of carcinogens in air and water pollutants, food additives, and chemicals contaminating industrial workplaces.

The supposed link between cancer and pollution or industrial chemicals was given further confirmation in the minds of many environmentalists and laymen by a 1974 report by the National Cancer Institute (NCI). In its study of regional cancer mortality rates during the years 1950 to 1969, the NCI indicated that the highest cancer death rate in the United States is to be found in New Jersey —a state better known for its smelly petro-chemical plants than for the gardens advertised on its license plates. The news that "New Jersey is Number One in Cancer" added a panicky sense of urgency to calls for environmental regulation, as New Jersey residents came to feel victimized by the "externalities" of local industry. Government officials scrambled to meet the angry public demands to clean

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up New Jersey's air and water: Federal money was allocated, committees were formed, and regulatory bills were written up, before anyone was really sure of the precise significance of the NCI findings.

Implicit in all the public and political clamor was the assumption that New Jersey residents faced an unusually high risk of getting cancer because of the state's dense concentration of industry. In her report *New Jersey: Garden State or Cancer Alley?*, Dr. Whalen takes a closer look at the NCI evidence and finds that the link between industry and cancer risk in New Jersey is not as clear as the popular belief has made it out to be.

Dr. Whalen argues that the data on which the alarming headlines were based—figures showing that New Jersey has the highest *overall* cancer death rate for white males—are of limited scientific usefulness. Such cumulative figures lump together a wide variety of diseases that have different causes and mechanisms: leukemia, cancer of the lung, breast, cervix, and other sites. Dr. Whalen looks for more precise causal clues by breaking down the overall statistics, analyzing mortality rates by anatomical site. To test the hypothesis that New Jersey's high cancer rate is attributable to industrial sources (occupational exposure to carcinogens or general environmental pollution), Dr. Whalen focuses on those specific forms of cancer known to be linked with chemical or industrial exposure—cancer of the bladder, lung, kidney, and liver, and leukemia—and she compares New Jersey's mortality rates for those diseases with the rates in three other regions with varying degrees of industrialization: New York City; suburban Westchester County, New York; and Rutland, Vermont, a small city where tourism is the major industry. Dr. Whalen concludes that only a very small percentage of New Jersey's cancer deaths could possibly be attributed to the presence of industry because, for each of those diseases but one, mortality rates in New Jersey are not significantly different from the other three regions. For example, the male death rate for liver cancer is 5.9 (per 100,000) in New Jersey, 5.3 in Rutland, 6.5 in New York City, and 5.4 in Westchester. New Jersey's leukemia mortality rate for white males is actually lower than in all three other regions.

New Jersey has an unusually high death rate only for bladder cancer—a disease that has been linked with occupational exposure to aromatic amines in textile dyeing. But Dr. Whalen is optimistic about future trends of this disease:

> It is important to note that the National Cancer Institute analysis of cancer deaths reflected mortality occurring in the 1950-1969 period. Given the long latency period of cancer, these figures reflect environmental conditions between 1920 and 1950. Because of the industrial-safety procedures currently mandated by federal and state regulations, there is little reason to believe that exposure to many occupational carcinogens, particularly the bladder carcinogens characteristic of the early dye industry, still poses hazards in New Jersey.

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Most significantly, Dr. Whalen finds that lung-cancer rates are not appreciably higher in New Jersey (46.8 per 100,000 as opposed to 45.2 in Rutland, 46.5 in New York City, and 43.9 in Westchester). What most people seem to have in mind in their interpretation of New Jersey's high cancer rate is that air pollution exposes the general population to an increased risk of lung cancer in particular. Carcinogens have indeed been found in urban air samples, in relatively small amounts. But the link between air pollution and lung cancer is a very weak one, Dr. Whalen argues, especially in comparison to the effects of the one cancer-causing factor about which there is widespread agreement among scientists: cigarette smoking.

> Although lung-cancer death rates are significantly higher in cities than in rural areas, suggesting a link to air pollution, the fact is that only *male,* not female, rates are elevated. This indicates that another causative factor may be more important. The most obvious . . . is cigarette smoking, which until 30 years ago was almost exclusively a male habit. Analyses of cancer time trends indicate that while a substantial amount of industrialization and associated urban "pollution" from coal smoke has been present for generations, an elevation of lung-cancer rates was not evident until the 1930's. One can observe that, given the current knowledge about the growing popularity of cigarette smoking after World War I, this factor is more relevant in terms of causation. Additionally, studies which have attempted to eliminate the effects of cigarette smoking have found no differences in lung-cancer death rates between urban and rural areas. . . .

Recently, even John Higginson, the originator of the environmental theory of cancer, has come to question the relative importance of industrial factors in cancer causation. As Daniel S. Greenberg reported in *The Washington Post* (July 17, 1979), Dr. Higginson has done further comparative studies of international cancer incidence and mortality rates, and finds, among other things, that "the incidence in nonindustrialized Geneva is as high as in urbanized England," and that regions with similar levels of industrialization have widely varying cancer rates. Dr. Higginson and a colleague conclude in a recent paper that "cancer patterns in Europe show no correlations with industrialization," thereby lending further support to Dr. Whalen's interpretation of the NCI data.

Dr. Whalen's conclusion is not that environmental pollution is harmless or should be tolerated. There are plenty of other health and aesthetic reasons for doing something about noxious odors and fuming smokestacks in New Jersey and elsewhere. But Dr. Whalen finds no scientific justification for claiming that those environmental measures will reduce *cancer* death rates. So long as anti-pollution regulation is promoted as an effective means of preventing cancer, attention is diverted from controlling the factors which, Dr. Whalen argues, have been shown more conclusively to increase cancer risk: carcinogenic "life-style" factors such as cigarette smoking, alcohol

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consumption, exposure to sun, and dietary and sex habits. It seems, from Dr. Whalen's study of the relationship between cancer and the environment, that the most important causes of cancer are more likely to be found in the environments we create *for ourselves.*

—Janet Hook

How to Teach in a University

Three instructors at Columbia University, using techniques of "socialist pedagogy," have found new ways of livening up those dreary old political-science courses. In the Spring 1979 issue of *News for Teachers of Political Science*, a publication of the American Political Science Association, Philip Akre, Mark Kesselman, and Carl Lankowski describe a course they taught at Columbia in the Fall 1976 semester:

> In Political Science G4420, "The State in Advanced Capitalist Society," we sought to present a critical theory of the state in advanced capitalist society from a socialist perspective, in part through drawing the connection between the lives of individuals and the contradictions of capitalist society. Further, we attempted to transcend liberal education at the level of theoretical analysis. We fostered a different mode of classroom relations and a political practice consistent with this theoretical analysis and collective endeavor. . . .
>
> The one requirement of the course was the writing of a paper on a relevant topic. A number of students wrote individual papers while most collaborated on group projects and papers. . . .
>
> The activity of [one] group unfolded within the framework of a goal defined at the outset by the group leader. It was to explore the theme of alienation in society and in university life by attempting to make explicit the connection between the course's critique of advanced capitalism and the lives of group members. In pursuit of this goal the group was confronted with a central problem: how to cope with extreme ideological divergence. Some of the students were in the ideological middle. Of the others, half were decidedy leftist and half were rightist in their political orientation.
>
> The group's work became an ongoing attempt to work with and through ideological conflict. The course material provided a leftist critique of capitalist society while group discussions provided a chance for students to react to this material and speak about the personal/historical basis of their ideological positions. In this way, students began to probe some of their fundamental assumptions about society and politics. Those on the left experienced support and an enrichment of their ideas. Some in the middle were moved to take a more critical stance. The conservatives found their ideas challenged as they rarely had been previously in the university.
>
> While group members did not collaborate on papers, the group did provide an atmosphere that encouraged radical ideas and research. Much of the time was devoted to exchanging research ideas and to

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discussion of the theoretical issues raised in the course lectures. However, the group also undertook the definition of the personal ramifications of those issues in extended discussions of the politics of everyday life. . . .

Early in the course, the local of the Transport Workers Union at Columbia went on strike over wage and sick-leave disputes with the university. The union did not enforce picket lines to stop classes and the course on the state was held at its usual hour. The course leaders arranged to have speakers from the union address the class. Stemming from this and from other contacts with the workers, a number of students from the course organized a strike-support committee. In a university atmosphere of general indifference and even hostility toward the strikers, this group carried on an education function until the end of the strike.

Northern Policies, Migration, and the Problems of Blacks

The evidence accumulates that the problems of blacks in Northern cities have their origins in the North and in Northern policies, not in the South, and certainly not in slavery. Thus, the percentage of female-headed black families increased greatly along with migration to Northern cities. And the Southern migrants to the North participate in the labor force in higher percentages, make more money, and are to be found on welfare in lesser proportions than Northern native blacks.

Larry M. Long of the U.S. Bureau of the Census pointed to this phenomenon in an article in the *American Sociological Review* in 1974 ("Poverty Status and Receipt of Welfare among Migrants and Nonmigrants in Large Cities"). In a follow-up note in the *American Sociological Review* for February 1979, replying to a question raised on some of his data, Long reports that numerous studies, using different data sources, have supported this finding. Long and Lynne R. Heltman ("Migration and Income Differences between Black and White Men in the North," *American Sociological Review*, 1977) "showed that black migrants who had lived in the North were more successful in escaping poverty and welfare dependence partly through higher rates of labor-force participation. The migrants had taken lower-status jobs but, in the aggregate, managed to earn slightly more than urban natives because proportionately more of the migrants were working. Leonard Weiss and Jeffrey G. Williamson ("Black Education, Earnings, and Interregional Migration: Some New Evidence," *American Economic Review*, 1972), analyzing a major 1967 national survey, found the same, as did other analyses of two other major data sources."

". . . [T]he consistency of findings among independent studies presents overwhelming evidence as to the basic correctness of the empirical facts regarding the relative income position of black migrants from the South vis-à-vis black Northern nonmigrants during the 1960's." The Southern migrants also had less need for

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welfare because of higher income, based on higher labor-force participation.

Why? "The answer," writes Long, "again coming from several completely independent data sources, appears in substantial part to involve differences between the migrant and nonmigrant groups in job expectations and attitudes toward work and welfare." It seems the migrants had "lower expectations regarding satisfactory working conditions," emphasized the pecuniary aspects of a job more than such matters as enjoying the work and having pleasant co-workers, and "had less knowledge of alternatives to work," according to studies by Arvil V. Adams and Gilbert Nestel ("Interregional Migration, Education, and Poverty in the Black Ghetto: Another Look at Black-White Earnings Differentials," *Review of Economics and Statistics,* 1976), Edward C. and Karen S. Koziara (*The Negro in the Hotel Industry,* University of Pennsylvania Press, 1968), and Herbert R. Northrup (*The Negro in the Automobile Industry,* University of Pennsylvania Press, 1968).

Long cautions: "One should avoid generalizing the results for the 1960's to earlier periods or to the future." But it seems clear that the disaster of the ghettoes in the 1960's and into the 1970's affected native Northern blacks more severely than Southern migrant blacks. And when one examines the attitudes associated with the greater willingness of Southern blacks to work, and thus to remain off welfare, one cannot escape the conclusion that the more generous welfare policies of the North helped substantially to make the difference.

Excellence in the Schools

In "Patterns of Black Excellence," in the Spring 1976 issue of *The Public Interest,* Thomas Sowell argued on the basis of his case studies that the success of certain black schools could only be attributed to the atmosphere of "order and respect" they maintained, and to the dedication of their staffs. Mr. Sowell discounted the effects of educational "innovations" such as new teaching techniques, special programs, new facilities, and the like. A study recently conducted in England by Michael Rutter, Barbara Maughan, Peter Mortimore, and Janet Ouston now confirms Mr. Sowell's argument. In a review in *The Listener* (April 26, 1979) of the book based on the study, *15,000 Hours: Secondary Schools and Their Effects on Children,* Mary Warnock highlighted the study's findings:

> The proposition which *15,000 Hours* is designed to prove is that some schools are better than others, and that it makes a difference to the pupils whether their school is good or bad. It makes a difference to their actual attendance at school (whether they are truant or not); to their behavior, both in and, crucially, outside school itself (whether they are likely to be in trouble with the police); and, finally, to their academic performance. Moreover, in the course of establishing these facts, the authors discover a very clear answer to the question what

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makes a school good. It is not pupil/staff ratio; it is not the catchment area of the school; it is not the age or suitability of the buildings; it is not an intake of non-delinquent or academically above-average primary-school children. It is what Professor Rutter endearingly calls the ethos of the school.

The schools chosen to form the basis of these conclusions were 12 comprehensive schools in London. The considerably different outcome for the pupils in each school was measured against the variable factors (such as intelligence, background, record of behavior) which could be determined at the time of entry to the school. The various differences within the schools, such as class size, were considered and rejected as possible causes of differences in outcome.

No uniform correlation emerged. The only important determining factor in the "goodness" of the school, apart from its ethos, was the balance of ability of the entry, and even this seems to be important only insofar as it makes the establishment of a successful ethos easier.

So what is this magic ethos? It depends entirely on the staff of the school. It depends, first and foremost, on the teachers having clear goals, and genuinely believing that their pupils can progress towards them. Thus teachers should have high expectations of their pupils (should believe, that is, that they *can* succeed, at whatever the task is that is given them). They should be open and generous in praising their pupils when they do progress towards these goals; and they should themselves set a good example. It is easy to see now why balance of intake makes such an ethos easier to establish. If academically able children are very thin on the ground, there may be too little possibility of the pupils approaching the kinds of goals which teachers will, at least partly, be interested in. Of course teachers in a very non-academic school could adopt different goals. But if their school is a comprehensive school, and if the expectation of parents and the outside world is that at least some of its aims will be academic, then it is absurd to ask that such goals should be altogether abandoned. And if they are not [somewhat academic], then the crucial connection between goal and probable success will be broken.

But, of course, academic goals are by no means the only ones. Just as important are the goals, and the expectations of successful progress towards them, in the sphere of behavior. And it is here that the teachers have a vast and perhaps unwelcome responsibility. For children *do* learn by example. If teachers are to teach their pupils not only to read and write and calculate and pass their examinations, but also to behave properly, to respect one another and to respect property, to take responsibility and to fulfill obligations, then they must be seen to do all these things themselves. They must be punctual at lessons, conscientious about setting and marking work, everlastingly fair and patient, open to talk to, and actually *like*, their pupils. Nothing less will do. Moreover, in order that a consistent and recognizable ethos should be established in a school, it is essential that teachers should cooperate with one another, and that the senior and experienced teachers should support, and even supervise, the junior and inexperienced.

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The Welfare Tax

In a June 1978 study prepared for H. C. Wainwright and Company of Boston, "Prohibitive Tax Rates and the Inner City: A Rational Explanation of the Poverty Trap," Arthur Laffer examined the deterioration, by some measures, in the relative economic position of nonwhites over the last decade. The gap between white and nonwhite unemployment rates has widened, for instance, and nonwhite participation in the labor force has declined while white participation is nearly unchanged. Mr. Laffer argues that the economic disincentives of the welfare system account for much of this change, and he offers this example:

> The net effects on spendable income of the combination of "needs" tests and taxes for an inner-city family of four in Los Angeles are calculated below. The family is assumed to have two adults, one of whom is either disabled or unemployed. In addition, we have assumed the family avails itself of the maximum city, county, state, and federal welfare benefits to which it is entitled given its income.
>
> The impact of incremental increases in gross wages of $100 per month has been calculated up to $1,000 per month. The wage figure is the total cost to the firm for employing one person. The income figures thus include employer contributions to social security and a maximum level of employment insurance contributions.
>
> Several biases exist cutting in a number of directions but the central point is obvious. Marginal tax rates for inner-city inhabitants are prohibitively high . . . .

*The Effects of Income and Taxes on Family Spendable Income from Wages and Welfare Benefits**

Monthly Gross Wages[1]	Net Family Spendable Income	Increase in Spendable Income	De Facto Marginal Tax Rate
0	$718.33	n.a.	n.a.
100	759.43	$41.10	58.9%
200	780.53	21.10	78.9
300	810.57	30.04	70.0
400	815.80	5.23	94.5
500	794.58	−21.22	121.2
600	794.58	none	100.0
700	794.58	none	100.0
800	809.92	15.34	84.7
900	832.49	22.57	77.4
1000	858.58	26.09	73.9

*Source: Arthur B. Laffer and Christopher R. Petruzzi, University of Southern California.
[1] Including employment taxes paid by employer.

Over the entire range from no wages to $1,000 per month (equivalent to a gross paycheck of about $900 per month), the family has at its disposal an additional $140.25 per month. This corresponds to an

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average tax "wedge" of 86 percent. For incomes between $400 and $800 per month, the family's ability to buy goods and services actually falls the more it earns. This corresponds to marginal tax rates of more than 100 percent.

Television Advertising and the Child

With the controversy in full swing over the effects of television advertising on children, Abt Associates recently reviewed the existing literature on the subject. The results, summarized in Abt's publication *Findings* (April 1979), show that children are not quite as vulnerable as some adults believe:

> Children aged 2-11 in the United States watch approximately 24 hours and 7 minutes of television per week, at all hours of the day and week, with trends toward increasing viewing on Saturday mornings and weekday prime time. . . .
>
> Children show a dramatic progression between the ages of 5 and 11 in the reception and processing of commercial messages. Younger children cannot separate commercials from non-commercial programming. . . . Children 8 to 10 years old are capable of multi-dimensional recall of advertisements, and, except for public-service announcements, completely distrust advertising. Older children (10 to 12 years) already are developing coherent, multi-dimensional perceptions of advertisements and reject the temptation to make blanket judgments about them. . . .
>
> A 1978 study of weekend network television advertisements found that 48.1 percent of those advertisements were for cereals, candies, or sweets. Of all advertisements for edibles observed in this study, 32.8 percent promoted sugared cereals; 20.1 percent sold candy bars or packaged candies. . . .
>
> Most children believe that sugar is bad for them and have approximately two cavities per year, regardless of television viewing.

An Exploited "Imperialist"?

The *Financial Times World Business Weekly* (May 14, 1979) reports that foreign investments in the United States have increased by nearly 80 percent in the past five years, casting an odd new light on the theory of "imperialism":

> The U.S. Commerce Department estimates that investments from abroad last year rose by $5.6 billion to $39.7 billion. The total foreign investment currently is put at $310 billion. That compares with only $174 billion just five years ago. . . .
>
> Acquisitions appear to be becoming a more popular way of getting a U.S. foothold. According to merger consultant W. T. Grimm, there was a 23-percent increase in foreign acquisitions of U.S. companies last year to a total of 199. And in the first quarter of 1979 Grimm detected a further acceleration, with 63 acquisitions proposed against 37 a year ago.

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The total investments of American business abroad totalled $312 billion at the end of 1977.

"White Flight" and School Fees

New York City and other major cities are still losing their white middle-class populations, and with them a valuable economic and social asset. In an article for the *City Almanac* (December 1978), a publication of the New School for Social Research, Thomas Vitullo-Martin notes that in the case of New York City this loss is disproportionately high among families with school-age children. "Between 1970 and 1975," he writes, "New York City lost 15.3 percent of its total intact white families with children under 18, a loss of more than 15,000 families per year. . . ." The impetus, Mr. Vitullo-Martin argues, comes not from the search for superior education *per se,* since that is available in city private schools, but from the structure of the federal tax code, which in effect provides a tax penalty for tuition-supported schools:

> The federal tax codes allow individuals to deduct from their taxable income local taxes that support public education—but not tuition to public or private schools. State and local income-tax laws generally follow federal rules. The deduction of a local tax from federally taxable income is, in effect, a federal subsidy of the local tax.
>
> If a family is in the 50-percent federal tax bracket, the net increase in its total tax obligation of a $3,000 rise in property taxes is only $1,500—only $1,240 if we take into account the effects of state and city income taxes. The local government raises its revenue by $3,000, but the federal government simultaneously decreases its revenue by $1,175. Any tax deduction is, of course, worth more to a high-income family than to one with a low income. The aggregate effect of the tax-deduction system on a high-income community is that the federal and state governments pay a higher percentage of the community's tax obligation—up to 70 percent of local taxes in some New York suburbs compared with less than 15 percent of city taxes.
>
> One social effect of this regressive tax provision is to drive high-bracket taxpayers from the city. These citizens need little in the way of public services; they provide most of their own needs from their own resources. One thing they do need, however, and something they find in the suburbs, is quality education. Local suburban districts commonly concentrate as much as 80 percent of their tax revenues on support of their schools. Local taxes, in effect, are little more than tuition to these exclusive public schools. And this "tuition" is made much less costly to the families in the district because they can deduct it from their taxable income. Schools can concentrate more on the needs of upper-income families, and the federal and state tax systems make it easier for the suburbs to pay for these schools.
>
> New York City does have schools that compete with high-quality suburban schools in attracting middle- and upper-income families:

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private schools. But because the tax system does not permit families to deduct tuition payments, private schools are farther out of reach for city families than the schools' tuitions would suggest.

A New York City family with $45,000 taxable income and two children in independent private schools (an average $8,000 per year expense) must allocate about $24,000 of gross taxable income to meet those education expenses. The 14 years of nursery, elementary, and secondary schools will cost the family more than $336,000 of its earnings. The family's alternative would be to move to a suburb with public schools of comparable quality and put that $336,000 into a house or other capital investment. The combination of disproportionate tax benefits for the public-education expenses of wealthy suburbs and the substantial tax disadvantages of using private schools in the city drives out middle- and upper-income families.

The elimination of the tax deductability of local taxes is not a popular proposal and would be difficult for the city to promote at the federal level. In addition, the change would create some problems for the city. Federal coffers would take in a lot more money, but the city wouldn't necessarily *get* more of it. Eliminating the deductability of local taxes is politically risky and probably out of reach. But providing for the deduction of school tuitions would benefit the city—and that measure is *within* reach.

A Connecticut Yankee . . .

Who can imagine what former Hartford, Connecticut resident Mark Twain would have had to say about the events described in the May 26, 1979 *Hartford Courant*?

The Mark Twain Memorial frog-jumping contest, which immortalized one of America's classic stories in the hearts of thousands of Hartford-area children for 22 years, has been canceled.

The Hartford contest, a leg in the Triple Crown of frog jumping, was canceled because the Memorial's new director, Wynn Lee, said he believes "it is not ecologically responsible to use wild animals as toys."

Memorial sources, however, told *The Courant* that the event was canceled because it had gotten too big and out of hand.

Former Memorial curator Wilson Faude, now Old State House director, called the cancellation decision "a national tragedy, not only for the kids, but for the frogs that have been training all year" for the event.

A Bureaucratic Imperative

The Bureau of Education for the Handicapped (BEH) in the Department of Health, Education, and Welfare grew from very modest beginnings as a research bureau to become the source of $800 million annually in grants to pay for the education of the handicapped. And the agency enjoys such enthusiastic support that

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its budget appropriations are consistently higher than its requests. But as Geoffrey O'Hara reports in *The Washington Monthly* (June 1979), the Bureau has lately had to look especially hard for people to help:

> When the "Handicapped Bill of Rights" (as the National Education for All Handicapped Children Act was called) passed Congress in 1975, certain projections had been made. Specifically, BEH had put together a "panel of experts" to estimate how many handicapped kids there were in U.S. schools. Relying heavily on an HEW survey of clinics, schools, and state agencies—as well as studies commissioned by BEH from nonprofit groups like the Council for Exceptional Children—the experts came back with a figure of 12 percent. And BEH told Congress that, indeed, 12 percent of America's school-age children probably needed "special education"—they had hearing and vision problems, speech impairments, emotional difficuties, mental retardation, orthopedic defects, or the generalized "learning disabilities." That 12-percent figure had an intoxicating effect on congressmen, who actually wrote into the law books estimates of the handicapped population based on the BEH projection. The notion that there were millions of undiscovered, untreated handicapped kids out there in the schools became the rallying cry for an expanded BEH.
>
> Dr. Martin's [head of the Bureau] problem is, now that BEH and the states have been counting handicapped children for five years, that the number of handicapped kids is falling way below expectations. No state can find the projected 12 percent—indeed, the states are reporting that an average of only 7 percent of their students need special education. Some states are even reporting that nearly 95 percent of their school-age population is perfectly normal, handicap-wise. Figures like these spell potential disaster to Dr. Martin in his efforts to solve the handicapped problem. For example, budget cutters in the OMB might seize on the handicapped shortfall as an excuse to keep BEH's funding below the authorized levels.
>
> Almost a year ago, with figures still lagging despite BEH efforts, Dr. Martin decided something had to be done, so he called a retreat. Not a tactical withdrawal, but the more common form of retreat—a meeting. Martin and his staff repaired to a motel in Fredericksburg to ponder the crisis in statistics. . . .
>
> After long hours of discussion, they came up with their answer: It was time to crank up "Project Childfind". . . .
>
> As Martin described the "childfind" campaign in a January memo, BEH would "refocus its operations so as to concentrate on the priority of making sure all handicapped children were appropriately served." The states weren't locating the promised 12 percent, so BEH itself would have to drum them up. The first prong of the operation was a letter, sent to state education officials in January, expressing disappointment with the numbers of handicapped children they were producing. While the letter allowed skeptically that "it remains possible" that a state *might* find only 8 or 9 percent of its school kids handicapped, it

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admitted to nothing lower than that. And states that persistently report low "childcounts" have found themselves pressured by BEH in subtle ways. Long and difficult negotiations have dragged on as state officials atempting to get approval for federal funding are pushed to put more effort and money into "childfind." States with low childcounts get reminders from BEH that they are being watched, sometimes audited, for the flaws in their programs.

The second phase of Childfind was a barrage of memos to BEH's "grantees," the various researchers in universities around the country who receive special BEH funding to work on projects in "special ed." The memo encouraged them to do what they could to support BEH's "renewed emphasis" on turning up more children with learning impediments. The nominal work of the grantees—which might be anything from improvisational theater to building models of day-care centers for the handicapped—was to be supplemented by a more basic, emergency activity: uncovering the elusive handicapped kids concealed in their communities. The goal of 12 percent handicapped could be reached if only everyone would pitch in.

As the final prong of BEH's attack, a vigorous campaign has been launched in the media asking "Where are the children?" and urging parents of the handicapped to assert their rights.

Martin is adamant that 12 percent is a proper target for his campaign. He admits the figure is "unscientific," but emphasizes the projections "have a long history, and it's been a very stable history." The figure, he said, "comes from a variety of sources." But it turns out that some of the studies on which BEH's original "experts" had relied were not models of accuracy. "We didn't examine the data very closely," one Hill staff member recalls of the central HEW statistics, "and we found out later we were multi-counting kids". . . .

Since the states first began reporting children with handicaps to BEH, no new study has been made to determine if the original 12-percent figure was accurate—in fact, two studies funded by BEH concluded that the state counts were more accurate than any system BEH might devise to check on them.

And in Britain . . .

Meanwhile, Britain is also experiencing a "shortage" of handicapped people, and as Melvyn Kettle and Carol Papworth report in *New Society* (May 31, 1979), Britain may abandon its quota system for employment of the handicapped:

> The average percentage of registered disabled people employed in firms with a quota obligation has fallen from 3 percent in 1961 to only 1.7 percent last year. In 1961, nearly two-thirds of firms employed 3 percent or more registered disabled workers; by 1978, only a third did so.
>
> The Manpower Services Commission, which took over responsibility for the scheme in 1976, has now issued a consultation paper. . . . The

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MSC is to put recommendations for the future of the system to the government next year.

Following the recommendations of the Tomlinson committee, the Disabled Persons (Employment) Act, 1944, placed a statutory duty on all employers employing 20 or more workers to employ a quota of registered disabled persons. Originally, the standard quota was set at 2 percent, but in September 1946 it was raised to 3 percent where it has remained ever since.

Under the system, a below-quota employer may not engage a worker who is not registered as disabled without first obtaining a permit to do so. Nor may an employer engage such an unregistered worker if, by so doing, he falls below quota. However, the Department of Employment has usually found it necessary to grant permits. On the one hand, it is not always possible to find a suitable registered disabled person to fill a particular vacancy. And even when an apparently suitable disabled person is available, it is difficult for the department to refute an employer's judgment that the applicant is unsuitable. . . .

The second reason why the quota system fails to work is that it is predicated on disabled people registering as such. It is well known that, for a variety of reasons, many do not choose to register. There are hardly any tangible advantages for the individual in doing so. Consequently, employers simply can't meet their statutory duty. There are not enough registered disabled people to enable all employers subject to the full quota to meet their obligations. For example, in 1971 the census identified some 23.8 million people of working age who were in work or temporarily unemployed. But there were only 620,691 registered disabled persons (i.e., 2.6 percent of the total). . . .

In fact, the situation is probably worse than that suggested by the figures. Some registered disabled persons will be unavailable for employment, anyway; they may, for example, be self-employed, already working for employers with less than 20 full-time workers (and thus not on quota returns), or employed in sheltered workshops (and thus not available for open employment).

In spite of these weaknesses, the system, together with the registration of disabled persons, does focus the attention of employers on their social obligations and the problems people with disabilities experience in seeking employment. The quota system also provides data regarding the employment of disabled people, albeit of highly dubious statistical value. Thus, a case could be made out for keeping the quota system with modifications. But it is difficult to see how the present system, or any variation of it, could resolve its inherent weaknesses. Moreover, as the MSC report says, "The scheme has lost credibility, at least amongst those MSC staff operating it."

A Display of Intelligence?

Intelligence tests, which in the last decade came under heavy attack as tools of discrimination, do have some uses after all, as a report in *Science* (June 22, 1979) suggests:

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The Tennessee Valley Authority (TVA) is making a bid to become the nation's leader in selection and training of nuclear-reactor operators in the wake of the accident at Pennsylvania's Three Mile Island plant.

A new set of recommendations has been made by a six-member task force. They will apply to the three units operated by TVA at Brown's Ferry as well as 14 more reactors planned or under construction in three states.

In addition to various organizational measures to promote safety considerations, the report calls for extending the training period for reactor operators from two to three years, and for the introduction of "stringent intelligence testing." TVA already routinely gives personality tests to job applicants as part of their medical clearance. Applicants also take a General Aptitude Test battery that measures mechanical aptitudes. In order to become licensed, would-be operators also have to pass the Nuclear Regulatory Commission examination and oral and written TVA examinations.

The task force decided that these measures are still inadequate for predicting an operator's performance on the job. From now on, "intelligence will be stressed as one of the most important characteristics of superior reactor operators."

A New Anti-Malthusian Theory?

Demographers have already shown that either rising standards of living or large-scale family-planning programs can short-circuit population explosions in developing countries. But can an increase in poverty, as Paul Harrison argues in the British journal *New Society* (July 5, 1979), also reduce fertility?

In 34 out of 100 developing countries, birth rates fell by 10 percent or more between 1960 and 1975. Among the richer countries (with 1976 per-capita incomes of $500 or more), no fewer than 23 out of 47 (49 percent) achieved a 10-percent drop, but only 11 of the poorest 53 (incomes below $500) did so (21 percent). The deduction is obvious, and has been standard theory for years: Increasing wealth leads to more rapidly declining birth rates.

But the poor countries that pulled it off present a standing challenge to the conventional wisdom. As they add up to three quarters of Asia's population and two thirds of the Third World's total, understanding why is of some importance. Ten of the eleven (Burma, Bangladesh, India, Sri Lanka, Indonesia, Thailand, Philippines, Egypt, North Korea, and China) have striking similarities: They are all predominantly agricultural, irrigation-oriented, and densely populated in their settled regions. Excluding the two communist countries and Thailand, the other seven are notorious for the grinding poverty of their rural majorities, which recent surveys suggest is increasing.

Just as remarkable is the fact that the other Asian countries among the poorest 53, which have *not* succeeded in cutting their birth rates to any great extent, differ in important respects. Three of them—the

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Indochinese countries—have lost large casualties in war. Another four —Bhutan, Nepal, Pakistan, and Afghanistan—are mountainous and less densely populated.

The birth drop in communist countries and perhaps Thailand can be explained by the standard theory, because incomes have grown rapidly and increasing wealth has been widely distributed. As for the rest, it looks very much as if something is going on for which conventional theory cannot account. That something, I would argue, is a new process of demographic transition going on among the rural poor: Against all expectations, deepening *poverty* is leading them to limit their family size. . . .

The traditional view has been that the rural poor . . . are driven to high levels of fertility by the economic dictates of their situation. If they have land, it is cheaper to feed up a son to work it than to hire outside labor. If they have no land, they will also make a profit from having children, because the wages they will eventually bring home will exceed the cost of rearing them. . . .

It is clear that there must be limits beyond which this behavior ceases to be economically rational, even for the individual concerned. Those with land would no longer need extra sons as captive laborers if their holding was so small that they could work it themselves for all but a few days at transplanting or harvest. As the number of days for which help is needed decline, the relative cheapness of family labor (which must be fed all the year round) falls, until it becomes dearer than hiring. As for those with no land or insufficient land, if their wages were falling in real terms, the number of children they could afford to raise up to the age of 12 or so, when they became productive, would decline.

Hence, *a shrinking in the average size of farms and a decline in real wages would lead to declining fertility*—even in the absence of widespread education or easy availability of contraceptives. The simple reason for this is that every peasant knows bush methods (abstinence, withdrawal, induced abortion), and no one is so irrational as to court suicide through high fertility. The fertility decline of most West European countries predates the availability of contraceptives.

The evidence suggests that these processes are dominant in the seven countries we are looking at—and population increase is the main cause. In all of them the underlying dynamics are similar. With traditions of equal inheritance rather than primogeniture, the average size of holdings tends to diminish with each generation, and in most of these countries the typical holding is now below the size needed for self-sufficiency, and below the size a man can work alone. . . .

In India, for example, the landless rose from 24 percent of the rural population in 1961 to 38 percent a decade later. The increase happened in the poor states (in Bihar it rose from 25 percent in 1951 to 47 percent in 1971) as well as the rich (in the Punjab, up from 17 percent to 23 percent in the years from 1960-71). While India's average real per-capita income remained static from 1964-65 to 1973-74, real incomes in many rural areas tended to decline. Real daily-

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wage rates fell from 1.5 rupees per day in Uttar Pradesh in 1968-69, to 0.95 rupees in 1973-74. In Tamil Nadu, real daily-wage rates rose, but the number of days of work offered declined. Yet India's birth rate fell by 18 percent between 1960 and 1975, from 44 per 1,000 to 36.

The Effects of Changing Tax Rates

Absolute tax burdens in particular states have less effect on their relative economic growth than do *changes* in their tax burdens. This was the conclusion of a study by Robert J. Genetski and Young D. Chin, "The Impact of State and Local Taxes on Economic Growth," which they summarized in the Harris Bank's newsletter *HEROS* (November 3, 1978):

> Between 1969 and 1976 the economic growth achieved by a particular state relative to the average U.S. performance was not directly related to its average state and local tax burden; . . . over this same period, a state's relative economic growth was loosely related to the *change* in a state's relative tax burden, with those states displaying above-average increases in their tax burden tending to show below-average economic growth and vice versa; and . . . once allowance is made for a three-year period of adjustment to tax changes, there is a strong relationship suggesting that above-average increases in a state's tax burden can lead to below-average economic growth, while below-average increases in tax burdens lead to above-average growth. . . .
>
> The . . . analysis suggests that much of the relatively slow or rapid economic development among particular states should not be attributed to climate, high union wages, or many of the other explanations which are frequently offered. For the period analyzed, the "best-fit" regression line indicates that the change in the relative tax burden of particular states serves to explain approximately 60 percent of the variation in relative growth among the various states. The relationship suggests that for every 1-percent increase in a state's relative tax-burden growth over the period analyzed, relative income growth declines by approximately 0.5 percent and vice versa.

Populism and Property

The movement to regulate land use in the coastal zone of California began in 1970 with the introduction of four bills in the California legislature, which ultimately defeated them. It culminated with the passage of a statewide referendum in 1972. Steve H. Hanke and Armando J. Carbonell offered an analysis of the implications of the new law in *Water Supply and Management* (Volume 2, 1978):

> Those holding private property as well as local governmental jurisdictions had valuable rights in land. These rights were based on an existing set of institutions. Therefore, these landowners and local govern-

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ments had strong preferences that favored the maintenance of existing land-use-control institutions. Some landowners and developers in other parts of California feared that more stringent regulation of their lands would follow new regulations in the coastal zone. This group also favored the retention of existing institutions, although their preferences were probably not as strong as coastal-zone residents'.

On the other hand, California residents who did not own coastal-zone land, but who wished to use the coastal zone in its relatively undeveloped state, had strong preferences for restricting development and increasing public access to private coastal-zone lands. These residents, whom we may identify as conservationists, in effect, had preferences for transferring property rights from existing landowners to themselves. In addition, there were other residents of California, perhaps the largest group, who also had some preference for restricting coastal-zone development and increasing public-access rights. This group, although they might infrequently use the coastal zone for recreational purposes, had an interest in receiving benefits, even though they might be small.

Given these constituencies, the repeated failure of the state legislature to act favorably on coastal-zone bills can be interpreted through economic analysis. Even though the majority of California's voters favored, in varying degrees, more restrictive regulations on the use of coastal-zone lands, these regulations were defeated in the legislature because those who preferred the retention of existing land-use regulations had much stronger preferences than those who opposed their retention. With log-rolling the representatives of the intense minority were able to vote-trade and defeat attempts by the less-intense majority to introduce more restrictive regulations.

If this analysis is correct, the outcome of the legislative process can be interpreted as being rational. The external costs that would have been imposed on the intense minority, if the legislation had passed, were of a higher magnitude than the benefits that would have been received by the less-intense majority.

Given the failure of the legislature to pass more stringent controls, the referendum can be interpreted as a case in which the minority interests were not protected. Although about 55 percent of the voters preferred more stringent land-use controls, the value of these controls to this majority was less than the external costs they imposed on the minority. . . .

The use of simple-majority referenda with no side-payments is becoming a more generally accepted way of collectively determining the "proper" limitations on property rights in land. Our analysis questions the desirability of using this process, and suggests that, if referenda are used to determine property rights, something in excess of a simple-majority voting rule is desirable.

Making Libraries "Relevant"

The public libraries of Baltimore County, Maryland, are under-

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going a remarkable transformation, as Kenneth C. Davis reports in *Publishers Weekly* (August 13, 1979):

> A stranger who is unaware of the revolution taking place in the Baltimore County Public Library (BCPL) system might be startled to find a library branch nestled between a hardware outlet and an ice-cream parlor in a busy suburban shopping mall. Filled with bright, illuminated fixtures, dumps heavy with the latest romances, shelves stacked with best sellers and paperbacks, this library has no card catalogue, reference section, or study areas—nothing to hint that it is anything other than a typical bookstore in a desirable, high-traffic location.
>
> Placing these "mini-libraries" in shopping malls is an innovation traceable to Charles Robinson, director of the BCPL. In the traditionally hushed world of libraries, Robinson is currently making a lot of noise. His message: "The public pays for the library, so the public should get what it wants."
>
> For the BCPL that has meant adopting a policy of collecting materials that most patrons want and use rather than stockpiling an array of materials that librarians feel their patrons "should" read. It has also meant guaranteeing the availability of books as soon after publication as possible and having enough copies to satisfy demand immediately. . . .
>
> Robinson conceives of the library in untraditional terms. "Because of the high cost of books, we are largely a public, cooperative bookstore. We aren't preserving knowledge for the ages. That function is supported by the public through state universities. Why should we duplicate their effort?". . . .
>
> An aggressive, able, and sharp-tongued administrator, Robinson hardly fits most people's image of the benign, placid librarian. "There are two things wrong with librarians," he says. "They don't think about where their money comes from so they don't spend enough on books and then they buy the wrong books." The "wrong" books, he thinks, are those that librarians have learned are "good," "worthwhile," or "important," without ever considering whether the public will request them. "Librarians can't bear to pass up that English poetry of the mid-19th century. Why?" asks Robinson, his voice dripping sarcasm. "Because they're building a collection in that area or they liked poetry in school. And who gets cheated? The hundreds of taxpayers waiting to read *Chesapeake*."
>
> Under the new selection process, the BCPL tries to assure readers of best sellers that they won't have to wait months on a long list of "reserve" applicants for the books they want today. And how does a library stay in tune with public taste? In much the same way bookstores do—by keeping up with advertising budgets, media events, and hype. Says one librarian who is a convert to Robinson's thinking: "The quality of the item is unimportant relative to its publicity and the number of people who ask for it". . . .
>
> The library has also instituted a tough policy of weeding out books that don't circulate enough, with the long-range goal in mind of re-

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ducing the volume of little-used materials to 5 percent of the total holdings by 1982. At the BCPL, a book has to earn its keep.

Last year, 19 percent of the collection was weeded, while 17 percent (comprising new books and replacement copies) was acquired, for a net reduction of 2 percent. . . .

And just what gets eliminated?

Circulation figures are the determining factor. A new computer system has begun to keep tabs and will aid branch librarians in deciding which titles should be thrown out.

Those numbers could have a disturbing impact, as revealed by a story Shelkrot [BCPL's second-in-command] tells about the search for a librarian to fill a vacancy in one of the branches. "One of the questions we asked was, 'If *The Odyssey* doesn't circulate, what will you do with it?' If the applicant answered, 'But it's a classic, you must keep it in the collection,' we couldn't hire that person." Shelkrot laughs as he tells the story, but he is only half joking.

The Mood on British Campuses

Some observers of American campuses have in recent years suggested that students are becoming more conservative. A similar phenomenon has occurred in Britain, as Ian Bradley reports in the London weekly *Spectator* (June 23, 1973):

The extent to which student opinion has shifted rightwards in the last five years is shown in the results of similar polls taken at 16 colleges and polytechnics in London before the most recent election and in October 1974. The poll, conducted by *Sennet,* the London University student newspaper, showed that support for Labour had remained steady at 36.3 percent. Those intending to vote Tory, however, had increased from 18.3 percent in October 1974 to 30.5 percent and support for the Liberals had dropped from 25.8 percent to 14.7 percent.

In universities outside London support for the Conservatives is even greater. An opinion poll carried out at Exeter University last November, when Labour still had a commanding lead in the national polls, showed that 56.5 percent of those students who were intending to vote in a General Election were Conservatives, 31 percent Labour, and only 2.5 percent Liberal.

The present levels of membership of major student political groups and the recent results of elections in students' unions confirm the shift of opinion that has taken place among those at universities and polytechnics in the last few years. In 1974 the student radicalism that began in the late 60's was still not dead and parties of the far Left dominated union elections. Now, however, by far the largest student political organization is the Federation of Conservative Students with 14,000 members.

Four years ago, before they took a conscious decision to involve themselves in student politics, the Conservatives held only two full-time posts on student-union executives. Now they hold more than 70

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posts on campuses all over the country. The Federation achieved particularly rapid growth between 1975 and 1977 and, although its numbers have remained fairly static since then, it remains the best organised student political force.

The National Organization of Labour Students has 5,500 members and claims to have grown at an annual rate of 15 percent over the last three years. The Union of Liberal Students has also been growing steadily and now has a membership of over 3,000 with a further 5,500 students affiliated to Liberal societies.

By contrast, the level of support among students for political parties on the far Left has fallen dramatically in the last five years and is now tiny. The Socialist Workers' Party claims to have 700 student members, while the International Marxist Group has only 200 student members and says that they form a much smaller proportion of the group's total membership than they did in the early 70's. The Communist Party says that its membership in universities and polytechnics has dropped from 800 in 1974 to around 500 today.

In the world of student-union politics, in fact, victories for Labour and even for the Communists, who are joined with Labour in a broad Left alliance, betoken a move to the Right. Recent elections to executive posts have favored mainstream political parties at the expense of the far Left. At Sheffield and Essex Universities, Labour presidents have been elected after years of domination by the Socialist Workers' Party. The North East London Polytechnic union, a Socialist Workers' Party stronghold until two years ago, is now controlled by Labour, and the presidency of the neighboring Polytechnic of North London has been won from the SWP by the Communists. The Liberals have wrested control of the union at Manchester Polytechnic from the International Marxists.

In another traditional bastion of the Left, the London School of Economics, the Conservatives now have their first union officer in 10 years. They have also recently won the presidential election in the Oxford University students union for the fourth successive year.

Zero Environmental Impact

Six years ago, the Sierra Club commissioned an $85,000 study, "The Effects of Human Recreational Activities on Wilderness Ecosystems with Special Emphasis on Sierra Club Outings in the Sierra Nevadas," apparently as an act of self-flagellation. According to *Adventure Travel* magazine (June 1979), however, the Club suffered little, for the report—finally completed this spring—exonerated the Club of producing any seriously adverse environmental impact:

> "Impact problems are generally isolated to certain popular spots and not common to entire wilderness areas. Nature is in good health overall, will win out, and will soon cover all traces of man," the Sierra Club study claims. . . .
>
> Overall, the study finds that long-term ecological impact by non-

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motorized recreation in wilderness areas is minimal. "Impact is infinitesimally insignificant in terms of geological time," the study notes. Impact is greatest on the wilderness experience—the enjoyment of solitude, quiet, and uncompromised scenery. The impact is on aesthetics, not on wilderness ecology itself.

The Sierra Club study found that large outings tend to operate more efficiently than small groups. Large groups use less firewood and have less campsite impact per person than small groups. Large outings are also more likely to practice low-impact techniques because most are well organized and provide strong leadership. Behavior —not group size—is the most important factor determining impact, the study says.

The Sierra Club has an extensive outing program, leading more than 300 wilderness trips in the United States and 20 foreign nations. Under recent pressure from wilderness managers and its own members, the club has reduced its wilderness trips using stock animals or visiting over-used areas, and is restricting group size to 25 persons. These changes, however, will not reduce environmental damage, says John Stanley, a professional naturalist who designed the Sierra Club study. "None of these changes have anything to do with research findings. In fact, most of them run contrary to our study's conclusions." He said that large groups and horsepack outings are the frequent target of impact regulation because they are readily identifiable and easily restricted, not because of their ecological impact.

A New Class Reading List?

CoEvolution Quarterly (Spring 1979) recently surveyed 63 prominent environmentalists and others to find out what periodicals they read, thus affording an interesting glimpse of the tastes and interests of this group. The biggest favorite was *Science* magazine, and the most popular general-interest magazine was *The New Yorker*. Other favorites included *New Scientist*, *The New York Times*, *The Village Voice*, *The New York Review of Books*, *The Scientific American*, and *Not Man Apart* (published by the Friends of the Earth). Only one of those queried reported reading *The Public Interest*.

Why the Poor Oppose Redistribution

The absence of any widespread support for income redistribution among the poor in America has long been a source of great frustration for the political Left. Recently it has also been a matter of interest to political scientists on the Left. In the Summer 1979 issue of *Polity*, an informative article by one such political scientist, Jennifer L. Hochschild, "Why the Dog Doesn't Bark: Income, Attitudes, and the Redistribution of Wealth," discusses the question of why so many of America's poor oppose, or at least do not rally behind, redistributive policies that would appear to redound to their benefit.

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Citing the findings of a 1976 opinion survey, Ms. Hochschild notes:

> Support for steeply progressive taxation to alleviate poverty is strongest among the poor, and has increased [over the years] in all income categories. However, no more than 55 percent of the poor strongly support a program for their benefit. Other survey data support this finding; more poor than rich support antipoverty programs but never a majority of the poor.

And looking at responses to questions focusing on achieving complete equality of incomes, or "substantive" equality, she finds:

> As emphasis on equalization increases, agreement at all income levels decreases. . . . Again, more poor than rich favor redistributive programs, but fewer than half do so. Overall support for substantive equality has declined from 1939 to 1969.

In her own research, Ms. Hochschild has sought an explanation for this lack of widespread demand for income redistribution, not in broad historical or sociological terms, but by studying the personal attitudes and beliefs of the individuals one would expect to be making those demands. She has interviewed 27 working adults with family incomes below $12,000 and above $30,000 on their "perceptions, evaluations, and desires about issues of distributive justice." In analyzing the interview responses, Ms. Hochschild focuses on the degree of acceptance individuals express about their own occupational positions and income, and about the socio-economic structure of society at large (what she refers to as "the general structure of *positions* in society . . . [and] the general structure of *payments* to positions.") Although her subjects exhibited varying degrees of acceptance of the status quo—personally and politically—Ms. Hochschild finds that lower-income individuals commonly express attitudes and beliefs about society and their place in it that make them unreceptive to appeals for redistributive government policies. She cites several public-opinion polls that confirm her findings.

Many poor Americans, for example, express a high degree of acceptance of the structure of "positions" and "payments to positions" in society as a whole, and accept their own position in that structure as just. Many low-income Americans support the notion of meritocracy and believe that there is genuine equality of opportunity in the United States. Ms. Hochschild, citing the findings of other opinion analysts, notes that many among the poor "attribute both poverty and success to personal traits":

> In 1969, 51 percent of those with incomes below $4,000 gave individualist explanations for poverty (laziness, wastefulness); 25 percent gave fatalist explanations (luck, illness); and 29 percent gave structural ones (poor educational system, exploitation by the rich) . . . . [More recent studies of] belief in a just world—that people ultimately receive deserved rewards and penalties—suggest that upper-mid-

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dle-class respondents in fact perceive more inequity and injustice than working-class respondents.

Other individuals, Ms. Hochschild finds, express dissatisfaction with their own economic status, but oppose redistribution as a means of remedying their situation. Such individuals—personally ambitious, but politically conservative—seek only to change their own positions, motivated by a belief in the possibility of upward mobility. And citing a 1969 opinion survey, Ms. Hochschild observes that most Americans perceive mobility in their own lives, although she argues that for many this may be a misperception:

> 67 percent of the lower class and 77 percent of the upper class see themselves as better off than their parents were at the same age. Americans *are* more affluent now; however, people mistake absolute for relative improvement; therefore they are unaware that their position in the total range of inequality has not changed.

Indeed, low-income respondents seem to be *more* hopeful about their prospects for mobility than are the affluent: "When perceptions of the near past and expectations of the future are compared, . . . respondents with incomes below the mean ($13,800 in 1975) are more optimistic than those above the mean." As Ms. Hochschild reads the data, low-income respondents tend to be less realistic than high-income respondents, because in many cases, she argues, their expectations are less warranted by their experience in the recent past.

Ms. Hochschild has also found that among the poor who *do* express dissatisfaction with existing economic structures, many do not support redistributive policies because for a variety of reasons they accept their own positions within those "illegitimate" structures. Some people of this cast of mind oppose redistribution for self-interested reasons: "They are willing to live with an illegitimate system because they derive benefits from it. They are self-conscious free-riders." A more common attitude underlying this seemingly inconsistent point of view is skepticism about the government's ability or willingness to respond to their needs. According to a 1961 study,

> poor and less educated people trust government and other people less than the rest of the population; those who distrust the government also feel unable to affect it and do not try to do so. Many of the poor, then, oppose the political system but make no effort to change it.

However "irrational" these attitudes may seem to "reformers," they lead the poor in America to oppose large-scale redistribution of income.

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